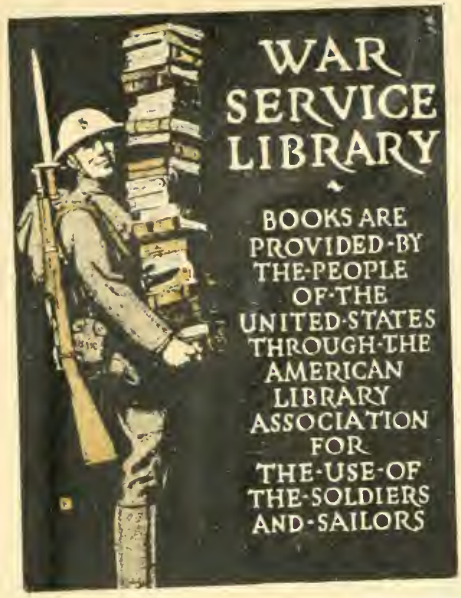

UNIVERSITY
OF CALIFORNIA
LOS ANGELES

SCHOOL OF LAW
LIBRARY

A TREATISE ON

THE LAW OF

COLLISIONS AT SEA.

BY

R. G. MARSDEN,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

SIXTH EDITION

BY

E. S. ROSCOE,

BARRISTER-AT-LAW,
ADMIRALTY REGISTRAR OF THE HIGH COURT,

AND

H. M. ROBERTSON,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

"*Si navis tua impacta in meam scapham damnum mihi dederit quæsitum est quæ actio mihi competeret.*"—Dig. lib. ix., tit. ii., fr. 29, § 2.

LONDON:
STEVENS AND SONS, LIMITED,
119 & 120, CHANCERY LANE,
Law Publishers.
1910.

Digitized by the Internet Archive
in 2008 with funding from
Microsoft Corporation

http://www.archive.org/details/treatiseonlawofc00mars

PREFACE

TO THE SIXTH EDITION.

There is little change in the form of the present edition; it has, without an increase in its size, been brought up to date by the inclusion of recent cases, and in a few places the text has been remodelled. Extracts from the Merchant Shipping Act, 1894, have been omitted, for it is found in practice that mere extracts from a statute of this character are apt rather to mislead than to assist. The draft International Convention as to Collisions is inserted as indicative of probable changes in the future in English law, which will, however, have to be incorporated in a statute to become binding on the Courts.

E. S. R.
H. M. R.

April, 1910.

TABLE OF CONTENTS.

PAGE

TABLE OF CASES - - - - - - ix

CHAP. I. NEGLIGENCE - - - - - 1

II. PRESUMPTION OF FAULT - - - - 39

III. LIABILITY - - - - - - 62

IV. PERSONS ENTITLED TO RECOVER - - - 97

V. DAMAGES - - - - - - 100

VI. THE RULE AS TO DIVISION OF LOSS - - - 117

VII. LIMITATION OF LIABILITY - - - - 146

VIII. TUG AND TOW - - - - - 167

IX. FOREIGN SHIPS—FOREIGN LAW—FOREIGN JUDGMENTS - - - - - - 198

X. COMPULSORY PILOTAGE - - - - 214

XI. COLLISION WITH REFERENCE TO (1) THE SHIPOWNER'S LIABILITY AS CARRIER; (2) THE CONTRACT OF INSURANCE—CRIMINAL AND OTHER CONSEQUENCES OF COLLISION - - - - - 265

XII. PRACTICE - - - - - - 285

XIII. COSTS - - - - - - 305

XIV. REGULATIONS FOR PREVENTING COLLISIONS AT SEA - 314

APPENDIX.

I.—THE REGULATIONS FOR PREVENTING COLLISIONS AT SEA - 507

II.—LOCAL RULES OF NAVIGATION - - - - 519

III.—INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW IN REGARD TO COLLISIONS—TRANSLATION OF THE DRAFT CONVENTION ANNEXED TO THE PROTOCOL OF OCTOBER 5, 1909 - - - 548

TABLE OF CASES.

A.

PAGE

"A. M. Ball," 43 Fed. Rep. 170 184
"A. P. Cranmer," 1 Fed. Rep. 255; 8 *ibid.* 523 ..... 168, 407
"A. R. Wetmore" and "Epsilon," 5 Bened. 147 189
"A. W. Thompson," 39 Fed. Rep. 115 416
Abouloff *v.* Oppenheimer, 10 Q. B. D. 295; 52 L. J. Q. B. 1; 47 L. T. 325; 31 W. R. 57 212
"Abraham," 28 L. T. 775; 2 Asp. M. C. 34 29
"Acacia," 1 Asp. M. C. 254 78
"Acanthus," (1902) P. 17; 71 L. J. Ad. 14; 85 L. T. 696; 9 Asp. M. C. 276 101
"Actæon," 1 Sp. 176 290
"Active," 5 L. T. 773 ..... 298, 307
"Ada" and "Sappho," 27 L. T. 718; 1 Asp. M. C. 475; on app. 28 L. T. 825; 2 Asp. M. C. 4 ..... 403, 465
"Ada A. Kennedy," 33 Fed. Rep. 623 390
Adam *v.* British and Foreign Steamship Co., (1898) 2 Q. B. 430; 79 L. T. 31; 8 Asp. M. C. 427 210
"Adam W. Spies," 70 L. J. Ad. 25 ..... 24, 86, 170, 192, 216, 227
Adams *v.* Glasgow and South Western Rail. Co., 3 Court of Sess. 4th ser. 215 98
"Addie B.," 43 Fed. Rep. 163 ..... 184, 486
"Addie Schlaefer," 37 Fed. Rep. 382 479
Addison *v.* Overend, 6 T. R. 766 97
"Admiral Boxer," Swab. 193 234
"Admiral Schley," 115 Fed. Rep. 378 ..... 169, 391
——— ——— 142 Fed. Rep. 64 378
"Adriatic," 33 L. T. 102; 3 Asp. M. C. 16 ..... 58, 348
——— 17 Otto, 512 416
African Steamship Co. *v.* Swanzy, 2 K. & J. 660; 25 L. J. Ch. 870; 27 L. T. 248; 4 W. R. 210 ..... 151, 163, 300, 311, 312
"Agamemnon," 1 Quebec L. R. 333 ..... 9, 180
"Agnes Otto," 12 P. D. 56; 56 L. J. Ad. 45; 56 L. T. 746; 35 W. R. 550; 6 Asp. M. C. 119 218
"Agra" and "Elizabeth Jenkins," L. R. 1 P. C. 501; 36 L. J. Ad. 16; 16 L. T. 755; 16 W. R. 735 ..... 305, 412, 414, 464, 466

PAGE

"Agricola," 2 W. Rob. 10; 7 Jur. 157 ..... 217, 230, 253, 257
"Aguadillana," 60 L. T. 897; 6 Asp. M. C. 390 ..... 381, 484, 491, 492
"Aid," 6 P. D. 84; 50 L. J. Ad. 40; 44 L. T. 843; 29 W. R. 614; 4 Asp. M. C. 432 292
"Ailsa," 76 Fed. Rep. 868 380
"Aimo" and "Amelia," 29 L. T. 118; 21 W. R. 707; 2 Asp. M. C. 96—P. C. 8, 388, 393, 414
Aitchinson *v.* Lohre. See Lohre *v.* Aitchison.
"Alabama" (screens), 10 Fed. Rep. 394 342
——— ——— (riding light), 26 Fed. Rep. 866 363
——— ——— and "Gamecock," 2 Otto, 695 ..... 95, 127, 181, 269
"Alaska," 33 Fed Rep. 107 74
——— ——— 130 U. S. Rep. 201 211
Albano *v.* Allan Line S.S. Co., (1907) A. C. 193; 96 L. T. 335; 76 L. J. P. C. 33; 10 Asp. M. C. 365 ..... 400, 403, 413, 463, 465
"Albany," 91 Fed. Rep. 805 369
——— ——— 74 Fed. Rep. 314 497
"Albert Edward," 44 L. J. Ad. 49; 24 W. R. 179 ..... 29, 77
"Albert Mason," 2 Fed. Rep. 821 32
"Alberta," 23 Fed. Rep. 807 376
"Albis," 73 L. T. 664; 8 Asp. M. C. 92 325
Aldrich *v.* Simmons, 1 Stark. 214 63
"Aleppo," 35 L. J. Ad. 9; 14 L. T. 228 35
"Alexander," 1 Dods. 278 75
"Alexander Folsom" and "Mary B. Mitchell," 44 Fed. Rep. 932 182
"Alexandria," L. R. 3 A. & E. 574; 41 L. J. Ad. 94; 27 L. T. 565 295
"Alfred," 7 Not. of Cas. 352; 3 W. Rob. 232 ..... 101, 292
"Alfredo," 32 Fed. Rep. 240 ..... 341, 365, 369, 390
"Algiers" (flare), 28 Fed. Rep. 240 365
——— ——— (flare), 38 Fed. Rep. 526 335
"Alhambra," 4 Fed. Rep. 86 342
——— ——— Br. & L. 286 288
"Alice" and "Rosita," L. R. 2 P. C. 214; 38 L. J. Ad. 20; 19 L. T. 753; 17 W. R. 209 287
"Alicia A. Washburn," 19 Fed. Rep. 788 184
"Aline," 1 W. Rob. 111 ..... 73, 79, 146
"Aliwal," 1 Sp. 96; 18 Jur. 296 40
"Allan" and "Flora," 14 L. T. 860 ..... 455, 456, 486
Allen *v.* Quebec Warehouse Co., 12 App. Cas. 101; 56 L. J. P. C. 6; 56 L. T. 30 481
"Allen Green," 60 Fed. Rep. 459 25
Alleson *v.* Marsh, 2 Ventr. 181 95
"Allianca," 39 Fed. Rep. 476 377
"Alma," (1903) P. 55; 72 L. J. Ad. 21; 88 L. T. 64; 51 W. R. 415 300
"Alne Holme" (first action), 47 L. T. 309; 4 Asp. M. C. 593 ..... 78, 79, 301
——— ——— (second action), 47 L. T. 307; 4 Asp. M. C. 591 ..... 80, 295
"Alpha," 27 Fed. Rep. 759 190
"Altair," (1897) P. 105; 66 L. J. Ad. 42; 76 L. T. 263; 45 W. R. 622; 8 Asp. M. C. 224 ..... 21, 187, 188, 189
"Altenower," 39 Fed. Rep. 118 ..... 9, 472

PAGE
"Altyre," Ad. Div. 27th Feb. 1885 541
"Amalia" (limitation), Cail *v.* Papayanni, Br. & Lush. 151; 1 Moo. P. C. N. S. 471; 2 N. R. 533; 32 L. J. Ad. 191; 9 Jur. N. S. 1111; 8 L. T. 805; 12 W. R. 24 ..... 81, 151, 156, 206, 208, 300
——— (pleadings), Br. & L. 311 288
——— (damages; interest), 34 L. J. Ad. 21; 5 N. R. 164, note; 13 W. R. 111 163
"Ambassador," 2 P. D. 37, note 9, 93
"Amboy," 36 Fed. Rep. 925 74
"America," 3 Bened. 424; 10 Blatchf. 155; 2 Otto, 432 ..... 5, 7, 323, 330, 398, 466, 475
——— 29 Fed. Rep. 304 341
——— 38 Fed. Rep. 256 479
"American" and "Syria," Union Steamship Co. *v.* Owners of "Aracan," L. R. 4 A. & E. 226; 43 L. J. Ad. 24; 31 L. T. 42; 22 W. R. 845; on app. L. R. 6 P. C. 127; 43 L. J. Ad. 30; 22 W. R. 927; 31 L. T. 42; 22 W. R. 927; 2 Asp. M. C. 350 ..... 161, 167, 168, 170, 171, 173, 293, 333, 335, 344, 406, 465
Amos *v.* Chadwick, 4 Ch. D. 869 294
"Andalusian" (launch), 2 P. D. 231; 46 L. J. Ad. 77 ..... 292, 498, 499
——— (limited liability), 3 P. D. 182; 47 L. J. Ad. 65; 39 L. T. 204; 27 W. R. 172; 4 Asp. M. C. 22 ..... 151, 159, 162
Andus *v.* "Saratoga," 1 Fed. Rep. 730 18
"Anerly," 58 Fed. Rep. 794 ..... 19, 126
Anglo-Australian St. Nav. Co. *v.* Cornell Steamboat Co., 32 Fed. Rep. 798 186
"Anglo-Indian," 3 Asp. M. C. 1; 33 L. T. 233; 23 W. R. 882—P. C. 335, 359
"Ann," Lush. 55 ..... 287, 310, 397
"Ann Caroline," 2 Wall. 538 395
"Ann and Mary," 2 W. Rob. 189; 7 Jur. 999 ..... 289, 292, 462
"Anna and Bertha," 64 L. T. 332; 7 Asp. M. C. 31 298
"Anna Johnson," 2 Stuart (V. Ad. Canada), 43 199
"Annapolis" and "Golden Light," Lush. 355; 5 L. T. 37; 1 Mar. Law Cas. O. S. 183 ..... 189, 233
——— and "Johanna Stoll," Lush. 295; 30 L. J. Ad. 201; 4 L. T. 417 ..... 198, 207, 216, 217, 253, 308
"Annie," 12 P. D. 50; 56 L. J. Ad. 70; 56 L. T. 500; 35 W. R. 366; 6 Asp. M. C. 117 ..... 75, 110, 115
——— (1909) P. 176; 100 L. T. 415; 78 L. J. P. 81; 11 Asp. M. C. 213 ..... 99, 393, 438
"Annie Williams," 20 Fed. Rep. 866 193
"Annot Lyle," 11 P. D. 114; 55 L. J. Ad. 62; 55 L. T. 576; 34 W. R. 647; 6 Asp. M. C. 50—C. A. 30, 480, 481
Anonymous Case, 1 Camp. 516, note 31
——— 1 Keb. 44 72
——— or Delanoy *v.* Robson, 5 Taunt. 605 276
"Anselm," (1907) P. 151; 97 L. T. 16; 76 L. J. P. 54; 10 Asp. M. C. 438 ..... 42, 43, 56, 310, 317, 468, 469
"Ansgar," 115 Fed. Rep. 440 495

PAGE

"Antilope," L. R. 4 A. & E. 33; 42 L. J. Ad. 42; 28 L. T. 74; 21 W. R. 464; 1 Asp. M. C. 477, 513 289
"Apollo," Little *v.* Port Talbot Co., (1891) App. Cas. 499; 61 L. J. Ad. 25; 65 L. T. 590; 7 Asp. M. C. 115 ..... 92, 239
"Appendix," 2 Pritch. Ad. Dig. 1761 113
"Arabian," 2 Stuart (V. Ad. Canada), 73 ..... 42, 396
"Aras," (1907) P. 28; 96 L. T. 95; 76 L. J. P. 37; 10 Asp. M. C. 358 ..... 379, 380
"Araxes" and "Black Prince," General Iron Screw Co. *v.* Moss, 15 Moo. P. C. 122; 5 L. T. 39 ..... 323, 331, 399, 466
"Aristocrat," (1908) P. 9; 97 L. T. 838; 77 L. J. P. 57; 10 Asp. M. C. 567 ..... 318, 468, 469
"Arbutus," 2 Mar. Law Cas. O. S. 136; 11 L. T. 208 ..... 215, 248
"Ardandhu," 11 P. D. 40; 12 App. Cas. 256; 56 L. J. Ad. 49; 56 L. T. 345; 35 W. R. 783; 6 Asp. M. C. 124 301
"Argentino," 14 App. Cas. 519; 59 L. J. Ad. 17; 61 L. T. 706; 6 Asp. M. C. 433—H. L. 100, 101, 112, 113
"Argo" (infringement), 82 L. T. 602; 9 Asp. M. C. 74—C. A. 42
——— (narrow channel), Swab. 462 ..... 18, 20, 229, 230, 234, 236
"Ariadne," 2 Boned. 472; 13 Wall. 475 ..... 60, 475
——— ———. See Little *v.* Burns.
"Arklow," Emery *v.* Cichero, 9 App. Cas. 136; 53 L. J. P. C. 9; 50 L. T. 305; 5 Asp. M. C. 219—P. C. 43, 44
"Armonia," 67 Fed. Rep. 362 33
Armstrong *v.* Gaselee, 22 Q. B. D. 250; 58 L. J. Q. B. 149; 59 L. T. 891; 37 W. R. 462; 6 Asp. M. C. 353 286
——— ——— *v.* Lancashire and Yorkshire Rail. Co., L. R. 10 Ex. 47; 44 L. J. Ex. 89; 33 L. T. 228; 23 W. R. 295 98
Arnison *v.* Smith, 40 Ch. D. 567; 58 L. J. Ch. 335; 60 L. T. 206; 37 W. R. 405 212
"Arran," 9 Quebec L. R. 278; Cook, V. Ad. Rep. Quebec, 22 23, 180, 481
"Arratoon Apcar," Ocean Steamship Co. *v.* Apcar & Co., 15 App. Cas. 37; 59 L. J. P. C. 49; 62 L. T. 331; 38 W. R. 481; 6 Asp. M. C. 310, 491—P. C. 46, 331, 432
Arthur *v.* Ford, Seld. Ser. Admiralty, H. lxxxiv. 138
"Arthur Gordon" and "Independence," Maddox *v.* Fisher, Lush. 270; 14 Moo. P. C. 103; 4 L. T. 563; 9 W. R. 582....5, 7, 167, 397, 405, 466, 477, 489, 496, 500
"Arturo," 6 Fed. Rep. 308 ..... 84, 180, 189
"Ashbourne," 99 Fed. Rep. 111 282
"Ashton," (1905) P. 21; 92 L. T. 811; 74 L. J. P. 28; 10 Asp. M. C. 88 ..... 401, 403, 412, 443
"Asia," (1891) P. 121; 60 L. J. Ad. 38; 64 L. T. 327; 7 Asp. M. C. 25 312
"Assaye," (1905) P. 289; 94 L. T. 102; 74 L. J. P. 145; 10 Asp. M. C. 183 254
"Assunta," (1902) P. 150; 71 L. J. Ad. 75; 86 L. T. 660; 9 Asp. M. C. 302 286
"Assyrian," 63 L. T. 91; 6 Asp. M. C. 525 292
"Astrakhan," (1909) Fo. 129; Ship. Gaz., Nov. 4th, 1909 ..... 59, 316

PAGE
"Atlanta," 41 Fed. Rep. 639 10
"Athabasca," 45 Fed. Rep. 651 ..... 183, 496
"Athol," 1 W. Rob. 374 94
Atkinson *v.* Newcastle and Gateshead Waterworks Co., 2 Ex. D. 441; 46 L. J. Ex. 775; 36 L. T. 761; 25 W. R. 794 502
"Atlas" (compulsory pilot), 2 W. Rob. 502 ..... 232, 233, 269
——— 2 Mar. Law Cas. O. S. Dig. 1480 483
——— 10 Blatchf. 459; 3 Otto, 302 ..... 17, 54, 95, 131, 182, 193, 475
"Atlee," 12 Fed. Rep. 734 108
"Attila," 5 Quebec L. R. 340 ..... 373, 374, 384, 392
Attorney-General *v.* Case, 3 Price, 302 ..... 217, 243, 253
——————— *v.* Norstedt, 3 Price, 97 79
Attwood *v.* Sellar, 5 Q. B. D. 286; 49 L. J. Q. B. 515; 42 L. T. 644; 28 W. R. 604; 4 Asp. M. C. 283—C. A. 283
"Augusta," 56 L. T. 58; 57 *ibid.* 326; 6 Asp. M. C. 58, 161 ..... 204, 218
"Aureole," 103 Fed. Rep. 699 411
"Aurora" (division of loss), Lush. 327 40
——— 2 Stuart, V. Ad. Rep. 52 42
——— and "Robert Ingram," Lush. 327 ..... 40, 124, 288, 335
Australian Direct Steam Navigation Co., *In re*, L. R. 20 Eq. 325; 44 L. J. Ch. 676 ..... 74, 79
Australian Steam Navigation Co. *v.* Smith ("Victoria" and "Keilawarra"), 14 App. Cas. 318; 61 L. T. 134 445
"Avon," 22 Fed. Rep. 905 ..... 335, 471
——— and "Thomas Joliffe," (1891) P. 7; 63 L. T. 712; 39 W. R. 176; 6 Asp. M. C. 605 ..... 125, 132, 179, 182, 193

B.

"B. & C.," 18 Fed. Rep. 543 125
"B. C. Terry," 30 Fed. Rep. 711 489
"B. K. Washburn," 19 Fed. Rep. 788 501
"Badger State," 8 Fed. Rep. 526 34
"Bahia," Br. & L. 61, 292; 11 Jur. N. S. 90 270
Baker *v.* Corditt, Seld. Ser. Admiralty, II. lxxxiii. 136
——— *v.* Power, 14 Fed. Rep. 483 82
Ball *v.* Berwind, 29 Fed. Rep. 541 89
"Baltic," 2 Bened. 452 30
"Baltimore," 34 Fed. Rep. 660 422
——————— (damages), 8 Wall. 377 107
"Banshee" (No. 1, practice), 56 L. T. 725; 6 Asp. M. C. 130 293
——————— (No. 2, overtaken ship), 57 L. T. 841; 6 Asp. M. C. 221—C. A. 329, 414, 414
"Barcelona," 10 Quebec L. R. 305 371
Barclay *v.* Cuculla y Gana, 3 Dougl. 389 265

PAGE

Barker *v.* Highley, 15 C. B. N. S. 27; 32 L. J. C. P. 270; 10 Jur. N. S. 591; 9 L. T. 228; 11 W. R. 968 302
"Barnstable," 181 U. S. Rep. 464 86
"Baron Aberdare" and "Gertrude," 12 P. D. 204; 13 *ibid.* 105; 56 L. J. Ad. 106; 57 L. T. 883; 59 *ibid.* 251; 36 W. R. 191, 616; 6 Asp. M. C. 224, 615 103
Barraclough *v.* Brown, 65 L. J. Q. B. 333; 74 L. T. 86; 8 Asp. M. C. 134; affd. 1897, App. Cas. 615; 76 L. T. 797 91
"Bartley," Swab. 198 294
Barwick *v.* English Joint Stock Bank, L. R. 2 Ex. 259 66
"Bassett Hound," 71 L. T. 12; 7 Asp. M. C. 467 360
Bastard *v.* Smith, 10 Ad. & Ell. 213 290
"Batavier" (at anchor; pilot, 2 W. Rob. 407 ..... 31, 219, 477
——— (costs), 15 P. D. 37; 59 L. J. Ad. 54; 62 L. T. 406; 38 W. R. 522; 6 Asp. M. C. 500 ..... 306, 307
——— (speed; swell), 1 Sp. 378; on app. nom. Netherlands Steamboat Co. *v.* Styles, 9 Moo. P. C. 286 ..... 28, 230, 231, 232, 472, 496, 498
"Battler," 62 Fed. Rep. 612 371
Baumwoll *v.* Furness, (1893) A. C. 8; 68 L. T. 1; 62 L. J. Q. B. 201; 7 Asp. M. C. 263 157
Baxter *v.* International Contracting Co., 65 Fed. Rep. 250 89
"Bay Queen," 42 Fed. Rep. 271 500
"Bay State," 3 Blatchf. 48 445
Beard *v.* General Omnibus Co., (1900) 2 Q. B. 530 65
"Bearn," (1906) P. 48; 94 L. T. 265; 75 L. J. P. 9; 10 Asp. M. C. 208 91
"Beaver," 2 Bened. 118 30
Beckham *v.* Chapman, "Little Besty" and "Jonas," Marsd. Ad. Ca. 270 139
Bede S.S. Co. *v.* River Wear Commissioners, (1907) 1 K. B. 310; 96 L. T. 370; 76 L. J. K. B. 434; 10 Asp. M. C. 370 92
"Behera," 6 Fed. Rep. 400 479
Beilby *v.* Raper, 3 B. & Ad. 284 251
——— *v.* Scott, 7 M. & W. 93; 10 L. J. Ex. 149 ..... 217, 226, 243
Belden *v.* Chase, 43 Dav. 674; 150 U. S. Rep. 674 ..... 132, 412
"Belgenland" (damages), 36 Fed. Rep. 504 111
——— 7 Dav. 355 ..... 319, 472
"Belgic," 2 P. D. 57 (note); 16 L. J. Ad. 58 (note); 35 L. T. 929; 3 Asp. M. C. 348 ..... 25, 178, 228, 239
Belitha *v.* Burwood, Seld. Ser. Admiralty, II. lxxxiv 137
"Bellanoch," (1907) P. 170; 97 L. T. 315; 76 L. J. P. 83; on app., (1907) A. C. 170; 97 L. T. 315; 76 L. J. P. 160; 10 Asp. M. C. 483 ..... 42, 345, 364, 451, 466, 468, 469
"Bellcairn," 10 P. D. 161; 55 L. J. Ad. 3; 53 L. T. 686; 34 W. R. 55; 5 Asp. M. C. 503—C. A. 301
"Bellerophon," H.M.S. (discovery), 2 Asp. M. C. 449 289
——— ——— (liability), 44 L. J. Ad. 7; 33 L. T. 412; 3 Asp. M. C. 58 ..... 94, 494, 496
"Ben Hooley," 6 Fed. Rep. 318 183

PAGE
"Benares" (lien), 7 Not. of Cas. 50, Suppl.; 14 Jur. 581 .....78, 151
———— (infringement), 48 L. T. 127; 5 Asp. M. C. 53; on app. 9 P. D. 16; 53 L. J. Ad. 2; 49 L. T. 702; 32 W. R. 268; 5 Asp. M. C. 171 .....48, 326, 336, 425, 431, 452, 462
"Benayo" (not reported) 290
"Bendo" and "Sampson," 44 Fed. Rep. 439 439
"Benefactor," 14 Blatchf. 254 .....330, 494
"Bengal," Swab. 468; 5 Jur. N. S. 1085 296
"Benjamin F. Hunt, Jr.," 34 Fed. Rep. 816 110
"Benmore," L. R 4 A. & E. 132; 43 L. J. Ad. 5; 22 W. R. 190..29, 291
Bennet *v.* Moita, 7 Taunt. 258 224
Bennett *v.* Lord Bury, 5 C. P. D. 339; 49 L. J. C. P. 411; 42 L. T. 480 294
"Berkshire." See "Scotia."
"Bernard Hall," 71 L. J. Ad. 72; 86 L. T. 658; 9 Asp. M. C. 300 ...370, 373, 379
"Bernina," No. 1 (bill of lading), 12 P. D. 36; 56 L. J. Ad. 38; 56 L. T. 450; 35 W. R. 214; 6 Asp. M. C. 112 .....96, 106, 121, 159, 160
———— No. 2, Mills *v.* Armstrong (overruling Thorogood *v.* Bryan), 13 App. Cas. 1; 57 L. J. Ad. 65; 58 L. T. 123; 36 W. R. 870; 6 Asp. M. C. 257—H. L. 13, 21, 22, 27, 60, 96, 98, 121, 124, 131, 132, 228, 267
"Bernina" (damages), 55 L. T. 781; 6 Asp. M. C. 65 .....101, 108
"Berrington" and "Ostrich" (not reported) 541
"Beryl," 9 P. D. 4; 49 L. T. 748; 5 Asp. M. C. 193; 32 W. R. 648; on app. 9 P. D. 137; 53 L. J. Ad. 75; 51 L. T. 554; 33 W. R. 191; 5 Asp. M. C. 321—C. A. ..46, 292, 321, 323, 324, 399, 410, 420, 421, 423, 426, 429, 430
"Beta," 44 Fed. Rep. 389 103
———— (jurisdiction), L. R. 2 P. C. 447; 34 L. J. Ad 76; 20 L. T. 988; 17 W. R. 933 297
———— (costs), Br. & L. 328; 34 L. J. Ad. 76; 12 L. T. 1..... 246
———— (speed), 9 P. D. 134; 51 L. T. 154; 33 W. R. 190; 5 Asp. M. C. 276 382
"Betsy Caines," 2 Hag. Ad. 28..... .....109, 145
Betts *v.* De Vitre, L. R. 3 Ch. 429; 37 L. J. Ch. 325; 18 L. T. 165; 16 W. R. 529 66
"Bianca," 8 P. D. 91; 52 L. J. Ad. 56; 48 L. T. 440; 31 W. R. 954; 5 Asp. M. C. 60 .....171, 297
"Bilbao," Lush. 149; 3 L. T. 338 .....78, 201, 216, 238, 303
"Biola," 34 L. T. 135; 24 W. R. 524; 3 Asp. M. C. 125 291
"Birkenhead," 3 W. Rob. 75 .....94, 419
Biscell *v.* "Alexander," 3 Fed. Rep. 671 186
"Bjorn," 9 P. D. 36 (n.); 5 Asp. M. C. 212 (n.) 295
Blaanpot *v.* Da Costa, 1 Eden, 130 276
"Black Prince," Lush. 568 .....111, 310
"Blackheath," 195 U. S. Rep 361 77
Blaikie *v.* Stembridge, 6 C. B. N. S. 891; 28 L. J. C. P. 329..... 63
"Blanche L.," 68 Fed. Rep. 939 183
"Blenheim" (damages), 1 Sp. 285.....105, 390, 463

PAGE

"Blenheim" (annch), 2 W. Rob. 421; 4 Not. of Cas. 393 499
——— 17 Fed. Rep. 608 102
Blewitt v. Hill, 13 East, 13 68
"Blossom," Olcott, 188 475
Blowers v. Starling, Seld. Ser. Admiralty, II. lxxxiv. 137
"Blue Bell," (1895) P. 242; 64 L. J. Ad. 71; 72 L. T. 540; 7 Asp. M. C. 601 ..... 364, 442, 539
Blyth v. Marsh, 1 McCord, 360 271
"Boanerges," 2 Mar. Law Cas. O. S. 239 456
"Bodlewell," (1907) P. 286; 96 L. T. 854; 76 L. J. P. 61; 10 Asp. M. C. 479 112
"Bold Buccleuch," Harmer v. Bell, 3 W. Rob. 220; on app. 7 Moo. P. C. 267 ..... 73, 74, 75, 79, 81, 84, 149, 296
——— 1 Pritch. Ad. Dig. 2nd ed. 144 472
"Bolina," 3 Not. of Cas. 208 ..... 7, 29
"Bolivia," 19 Fed. Rep. 169 ..... 60, 370
"Bordentown," 40 Fed. Rep. 682 189
"Borodino," 5 L. T. 291 ..... 97, 297
"Borussia," Swab. 94; 1 W. R. 503 ..... 180, 223, 230, 231, 486
"Boskenna Bay" and "Earl of Dumfries." See "Earl of Dumfries."
Boston Towboat Co. v. Winslow, 76 Fed. Rep. 595 58
"Bothnia," Lush. 52, 29 L. J. Ad. 65; 2 L. T. 160 ..... 30, 45, 287
"Bottle Imp," 42 L. J. Ad. 48; 28 L. T. 286 30
"Boucau," (1909) P. 163; 100 L. T. 617; 78 L. J. P. 87; 11 Asp. M. C. 240 10
Boucher v. Clyde Shipping Co., Ir. Rep. (1904) II. 129 133
Boucher v. Lawson, Cas. temp. Hardwicke, 85; Cun. 241 ..... 150, 270
"Bougainville" and "James C. Stevenson," Beal v. Marchais, L. R. 5 P. C. 316; 28 L. T. 822; 21 W. R. 653; 2 Asp. M. C. 1 ..... 41, 327, 328, 342, 405, 414, 432, 457
"Bourgogne," (1899) App. Cas. 431; 68 L. J. Ad. 104; 80 L. T. 845; 8 Asp. M. C. 550—H. L. 285
——— 139 Fed. Rep. 434 376
Bowcher v. Noidstrom, 1 Taunt. 568 63
"Bowden," 78 Fed. Rep. 649 496
Bower v. Peate, 1 Q. B. D. 321; 45 L. J. Q. B. 446; 35 L. T. 321 68
"Bowesfield," 51 L. T. 128; 5 Asp. M. C. 265 295
Bradburn v. Great Western Rail. Co., L. R. 10 Ex. 1 ..... 115, 278
Brake v. "Piper," Seld. Ser. Admiralty, II. lxxxiv. 138
"Brandalbane," 7 P. D. 186; 46 L. T. 204; 4 Asp. M. C. 505 ..... 44, 294, 295, 359, 361, 390, 394, 397, 435, 436
"Breeze," 2 Pr. Ad. Dig. 176 113
"Bridgeport" (speed; inevitable accident), 35 Fed. Rep. 159 33
——— 14 Wall. 116; 7 Blatchf. 361 477
——— 6 Blatchf. 3 488
Briggs v. Whitehall, 68 Fed. Rep. 1022 384
"Brinio," 90 L. T. Journal, 249 ..... 157, 159
Brinsmead v. Harrison, L. R. 7 C. P. 547; 41 L. J. C. P. 190; 27 L. T. 99; 20 W. R. 784—Ex. Ch. 95
"Bristol," 11 Fed. Rep. 156 397

PAGE
"Bristol," 29 Fed. Rep. 867 131
"Bristol City," (1902) P. 10; 71 L. J. Ad. 5; 85 L. T. 694; 50 W. R. 383; 9 Asp. M. C. 274 215
"Britannia," (1905) P. 98; 92 L. T. 634; 74 L. J. P. 46; 10 Asp. M. C. 65 ..... 378, 379
——— 46 Davis, 130; 34 Fed. Rep. 546 ..... 18, 410, 412, 413, 492
"Britannic," 39 Fed. Rep. 395 ..... 131, 376, 429
British Columbia Towing and Transport Co. *v.* Sewell, 9 Duval (Canada), 527 ..... 159, 162, 189, 192
"British Commerce," 9 P. D. 128; 53 L. J. Ad. 72; 51 L. T. 604; 33 W. R. 200; 5 Asp. M. C. 335 110
"British Empire," 24 Fed. Rep. 493 486
"British Princess" and "Sedmi Dubrovacki," Mitch. Mar. Reg. March, 1878 ..... 59, 206
Brooks v. Macdonell, 1 Y. & C. Ex. 500 276
"Broomfield," 94 L. T. 109; 10 Asp. M. C. 194 404
"Brothers," 2 Bissel, 104 126
Brown *v.* Gravenor, Seld. Ser. Admiralty, II. lxxxiv. 139
——— *v.* Mallet, 5 C. B. 599; 17 L. J. C. P. 227; 12 Jur. 204 ..... 26, 88
——— *v.* Wilkinson, 15 M. & W. 391; 6 L. J. Ex. 34 ..146, 149, 151, 161
"Brunel," (1900) P. 24; 69 L. J. Ad. 8; 81 L. T. 500; 48 W. R. 243; 9 Asp. M. C. 10 ..... 157, 159
Brunsden *v.* Humphrey, 11 Q. B. D. 712; 14 *ibid.* 141; 52 L. J. Q. B. 756; 53 *ibid.* 476; 51 L. T. 529; 32 W. R. 944 295
"Bruxellesville" (damage), (1908) P. 312; 98 L. T. 251; 77 L. J. P. 156; 11 Asp. M. C. 24 ..... 103, 107
——— ——— (collision), (1907) Fos. 323, 329; Ship. Gaz., 23rd Nov. 1907 ..... 103, 413
Bryce *v.* Canadian Pacific Ry. Co., 13 Brit. Col. Rep. 446 441
Buchanan *v.* Rucker, 1 Camp. 63; 9 East, 192 212
"Buckhurst," 6 P. D. 152; 51 L. J. Ad. 10; 46 L. T. 108; 30 W. R. 232; 4 Asp. M. C. 484 ..... 10, 52, 306, 340, 347, 348, 494
"Buffalo," 50 Fed. Rep. 628 337
Buller *v.* Fisher, 3 Esp. 67; 1 Peake, 183; 3 Taunt. 4 ..... 266, 271
Bunne *v.* Williamson, Seld. Ser. Admiralty, II. lxxxiii. 136
Burger *v.* Indemnity Mutual Insurance Co., (1900) 2 Q. B. 348; 82 L. T. 831; 48 W. R. 643; 9 Asp. M. C. 85 273
"Burlington," 72 L. T. 602; 8 Asp. M. C. 38—C. A. 91, 239
"Burma" (No. 1), 80 L. T. 808; 8 Asp. M. C. 547 308
Burnand *v.* Nerot, 1 C. & P. 578 290
——— *v.* Rodocanachi, 7 App. Cas. 333; 51 L. J. Q. B. 548; 47 L. T. 277; 31 W. R. 65 276
Burnard *v.* Aaron, 31 L. J. C. P. 334 69
"Burns," (1907) P. 137; 96 L. T. 681; 76 L. J. P. 41; 10 Asp. M. C. 424 296
Burrell *v.* Macbrayne, 18 Ct. of Sess. Cas. 4th ser. 1048 ..180, 225, 230, 231
——— *v.* Simpson, 4 Ct. of Sess. Cas. 4th ser. 177 ..... 156, 166
Burrows *v.* Gower, 119 Fed. Rep. 616 ..... 345, 369

PAGE

Bury *v.* Gold. Seld. Ser. Admiralty, II. lxxxiv. 134, 137
" Bushire," 52 L. T. 740; 5 Asp. M. C. 416 .....116, 131
Busk *v.* Royal Exchange Assurance Co., 2 B. & Ald. 73 272
Bussy *v.* Donaldson, 4 Dallas, 194 241
Butterfield *v.* Boyd, 4 Blatchf. 350 498
" Byfoged Christensen," and " William Frederick," 4 App. Cas. 669; 41 L. T. 535; 28 W. R. 233; 4 Asp. M. C. 201—H. L....3, 5, 321, 386, 413, 461
Byrne *v.* Boadle, 2 H. & C. 722; 33 L. J. Ex. 13; 12 W. R. 279; 9 L. T. 450..... 36
" Byron," 2 New South Wales L. R. Ad. 1 .....333, 392, 404
——— Ship. Gaz., Feb. 9, 1905 380
" Bywell Castle," 4 P. D. 219; 41 L. T. 747; 28 W. R. 293; 4 Asp. M. C. 207 .....3, 5, 403, 446

C.

" C. M. Palmer," and " Larnax," 29 L. T. 120; 21 W. R. 702; 2 Asp. M. C. 94—P. C.....3, 4, 336
" C. P. Raymond," 28 Fed. Rep. 765 109
" C. R. Stone," 49 Fed. Rep. 475 456
" C. S. Butler," L. R. 4 A. & E. 238; 31 L. T. 549; 23 W. R. 113; 2 Asp. M. C. 408 .....304, 319, 504
——— and " Baltic" (salvage), L. R. 4 A. & E. 178; 43 L. J. Ad. 17; 30 L. T. 475; 22 W. R. 759; 2 Asp. M. C. 237 ....12, 282, 283
" Cachapool," 7 P. D. 217; 43 L. T. 171; 4 Asp. M. C. 502....22, 31, 221, 230, 253, 500
" Cadeby," (1909) P. 257; 101 L. T. 48; 78 L. J. P. 85 29
" Calabar," Moss *v.* The African Steamship Co., L. R. 2 P. C. 238; 19 L. T. 768 .....230, 233, 474
" Calcutta" (bail), 17 W. R. 744.....95, 161
——— (disabled ship), 21 L. T. 768; 3 Mar. Law Cas. O. S. 336.. 463
" Calla," Swab. 465 .....349, 463
" Calliope," (1891) App. Cas. 11; 60 L. J. Ad. 28; 63 L. T. 781; 39 W. R. 461; 6 Asp. M. C. 585—H. L..... 91
" Calypso," Swab. 28 294
——— and " Mississippi," Mitch. Mar. Reg. 1878 .....44, 451
" Cambria," Ad. Div. May, 1887..... 292
" Cambridge," " Underhill," and " Chase." 4 Bened. 366 182
" Cambusdoon," 30 Fed. Rep. 704 353
" Camellia," 9 P. D. 27; 53 L. J. Ad. 12; 50 L. T. 126; 32 W. R. 495; 5 Asp. M. C. 197 312
" Cameo," Lush. 408; 5 L. T. 773 295
" Campania," (1901) P. 289; 70 L. J. Ad. 101; 84 L. T. 673; 9 Asp. M. C. 177 .....36, 374, 375, 377
Campbell *v.* Pennsylvania Rail. Co., 85 Fed. Rep. 462 .....65, 474
" Canada," Lush. 586 102

PAGE
Canada Shipping Co. *v.* British Shipowners' Mutual Protection Association, 22 Q. B. D. 727; 23 *ibid.* 342; 58 L. J. Q. B. 343, 462; 60 L. T. 863; 61 *ibid.* 312; 38 W. R. 87; 6 Asp. M. C. 388, 422 162
"Canadian," 1 W. Rob. 343 288
Cannan *v.* Meaburn, 1 Bing. 465 151
"Captain Weber," 89 Fed. Rep. 957 333
"Car Float" (No. 4), 89 Fed. Rep. 877 186
"Cardiff," (1909) P. 183; 78 L. J. P. 110 242
Cardiff Steamship Co. *v.* Barwick. See "Raisby."
Cargo *ex* Argos, L. R. 5 P. C. 134; 42 L. J. Ad. 49; 28 L. T. 77; 21 W. R. 707; 2 Asp. M. C. 6 106
Cargo *ex* Capella, L. R. 1 A. & E. 356; 16 L. T. 800 281
Cargo *ex* Galam, Br. & Lush. 167; 2 Moo. P. C. N. S. 216; 10 Jur. N. S. 477; 33 L. J. Ad. 97; 9 L. T. 550; 12 W. R. 495 79
"Carinthia." See "Servia."
"Carl Johan" (cited), 3 Hag. Ad. 186.....146, 208
"Carl XV.," (1892) P. 324; 61 L. J. Ad. 111; 68 L. T. 149; 40 W. R. 576; 7 Asp. M. C. 242—C. A. 225
"Carlotta," (1899) P. 223; 68 L. J. Ad. 87; 80 L. T. 664; 8 Asp. M. C. 544 .....318, 345, 346, 444, 504, 537, 539
Carmichael *v.* Liverpool Sailing-ship Owners' Mutual Indemnity Association, 19 Q. B. D. 242; 56 L. J. Q. B. 428; 57 L. T. 550; 35 W. R. 793; 6 Asp. M. C. 184—C. A. 162
"Carnarvon Castle," 38 L. T. 736; 26 W. R. 876; 3 Asp. M. C. 607—C. A. 295
"Caro," 23 Fed. Rep. 734 337
"Carolus Rotchers," 3 Hag. Ad. 343 (note) 5
Carr *v.* Fracis Times & Co., (1902) App. Cas. 176; 71 L. J. K. B. 361; 85 L. T. 144 204
"Carrier Dove," Br. & Lush. 113.....223, 229, 231, 485
"Carroll," 1 Benod. 286; 8 Wall. 302.....3, 34, 387, 406, 418
"Carron," 1 Sp. 91 .....29, 369
Carruthers *v.* Sydebotham, 4 M. & S. 77.....215, 217, 243, 253
Carshore *v.* North Eastern Ry. Co., 29 Ch. D. 344; 54 L. J. Ch. 760; 52 L. T. 232; 33 W. R. 420 298
"Cartsburn," 5 P. D. 59; 49 L. J. Ad. 14; 41 L. T. 710; 28 W. R. 378; 4 Asp. M. C. 202—C. A. 297
"Castle Rising" (not reported) 281
"Castlegate," (1893) App. Cas. 38; 62 L. J. P. C. 17; 68 L. T. 99; 41 W. R. 349; 7 Asp. M. C. 284—H. L. 82
"Castleventry," Ship. Gaz., April 16th, 1904 380
Castrique *v.* Behrens, 30 L. J. Q. B. 163; 7 Jur. N. S. 1028; 4 L. T. 52 213
Castrique *v.* Imrie, L. R. 4 H. L. 414; 39 L. J. C. P. 350; 4 L. T. 143; 19 W. R. 1—H. L. 212, 213
"Catalina," 2 Sp. 23 307
"Catalonia," 43 Fed. Rep. 396 .....44, 370, 376
Catharine *v.* Dickinson, 17 How. 170 475
"Cathay" (limitation), 69 L. J. Ad. 89; 82 L. T. 823; 9 Asp. M. C. 100. 156
——— (fog), 81 L. T. 391; 9 Asp. M. C. 35 .....383, 386, 420

PAGE
"Cathcart," L. R. 1 A. & E. 311; 16 L. T. 211 298
"Catherina Maria," L. R. 1 A. & E. 53; 12 Jur. N. S. 380 290
"Catherine," 15 Jur. 231 128
"Catherine of Dover," 2 Hag. Ad. 145 .....2, 143
Caton *v.* Romney, 13 Wend. 387 266
"Catterina Chiazzare," 1 P. D. 368; 45 L. J. Ad. 105; 34 L. T. 588; 3 Asp. M. C. 170 211
Cattlin *v.* Hills, 8 C. B. 123.....13, 98
Cavan *v.* Stewart, 1 Stark. 525 212
"Cayo Bonito," (1902) P. 216; 71 L. J. Ad. 88; 86 L. T. 867; 9 Asp. M. C. 308; aff'd. (1903) P. 203 256
"Cayuga," 14 Wall. 270.....329, 404, 436, 456
——— — (damages), 7 Blatchf. 385 111
——— (tug and tow), 16 Wall. 177 189
Cayzer *v.* Carron Company. See "Margaret."
"Celia," 13 P. D. 82; 57 L. J. Ad. 55; 59 L. T. 125; 36 W. R. 540; 6 Asp. M. C. 293 .....73, 74, 296
"Celt," 3 Hag. Ad. 321 .....57, 124, 125, 144, 307
"Celtic," Ship. Gaz., July 19, 1909..... 308
"Cephens," 24 Fed. Rep. 507 110
"Ceres," Swab. 250..... 479
"Ceto," 14 App. Cas. 670; 62 L. T. 1; 6 Asp. M. C. 479—H. L..... 310, 419, 420, 421, 429
Chadwick *v.* City of Dublin Steam Packet Co., 6 Ell. & B. 771; 3 Jur. N. S. 207..... 390
"Challenge," Ad. Div. 16th Dec. 1887 222
"Challenge" and "Duc d'Aumale," (1905) P. 198; 93 L. T. 399; 74 L. J. P. 55; 10 Asp. M. C. 105 .....167, 378
"Chalmette," 52 Fed. Rep. 174 494
Chamberlain *v.* Ward, 21 How. 548.....60, 475
"Champagne," 69 Fed. Rep. 299..... 336
"Chance," Ship. Gaz., March 8, 1907..... 311
"Chancellor," 4 Benod. 153 377
Chandler *v.* Blogg, (1898) 1 Q. B. 32; 67 L. J. Q. B. 336; 77 L. T. 524; 8 Asp. M. C. 349 274
"Chanoury," 42 L. J. Ad. 58; 28 L. T. 284; 1 Asp. M. C. 569 436
Chapman *v.* Royal Netherlands Steam Navigation Co. ("Savernake"), 4 P. D. 157; 40 L. T. 433; 48 L. J. Ch. 449; 27 W. R. 554; 4 Asp. M. C. 107 .....123, 127, 130, 151, 268
"Charkieh," L. R. 4 A. & E. 120; 42 L. J. Ad. 70; 29 L. T. 404; 22 W. R. 63; 2 Asp. M. C. 121 .....199, 295
——— L. R. 4 A. & E. 59; 42 L. J. Ad. 17; 28 L. T. 513; 1 Asp. M. C. 581; L. R. 8 Q. B. 197 209
"Charles Allen," 11 Fed. Rep. 317 .....131, 193
"Charles Amelia," L. R. 2 A. & E. 330; 38 L. J. Ad. 17; 19 L. T. 429; 17 W. R. 624 74
"Charles Chaloner," 19 Lower Canada Jur. 201 42
"Charles E. Soper," 19 Fed. Rep. 841 281
"Charlotte," (1908) P. 206; 99 L. T. 380; 77 L. J. P. 132 97
"Charlotte Raab," Brown, Ad. 453.....393, 463, 488, 489

PAGE
"Charlotte Webb," 43 Fed. Rep. 151 376
"Charlton," 73 L. T. 49; 8 Asp. M. C. 29; 11 R. 825—C. A. .. 216, 221, 248, 308
"Charming Nancy" and "The Dawkins" (not reported) 199
Chartered Mercantile Bank of London, India and China *v.* Netherlands India Steam Navigation Co., 10 Q. B. D. 521; 52 L. J. Q. B. 220; 48 L. T. 516; 5 Asp. M. C. 65—C. A. .. 87, 96, 116, 123, 130, 132, 156, 202, 203, 208, 265, 266, 267, 268, 269
"Chase," Stuart's Vice-Ad. Rep. Lower Canada (1875), 361 77
Chasteauneuf *v.* Delange, 7 App. Cas. 127; 51 L. J. P. C. 37; 46 L. T. 65; 4 Asp. M. C. 489—P. C. 64
"Chatham," (1907) Fo. 460; Ad. Ct., October 26, 1908 310
"Chattahoochee," 173 U. S. Rep. 540 ..... 23, 382
"Chauncey M. Depew," 59 Fed. Rep. 791 33
"Cherokee," 15 Fed. Rep. 119 492
"Cheruskia," 92 Fed. Rep. 683 376
"Cheshire Witch," Br. & Lush. 362; 11 L. T. 350 298
"Chicago," 71 Fed. Rep. 537 493
"Chickasaw," 41 Fed. Rep. 627 ..... 12, 65, 66
"Chieftain," Br. & Lush. 104; 9 Jur. N. S. 388; 32 L. J. Ad. 106; 8 L. T. 120; 11 W. R. 537 ..... 78, 80
"Chilian," 4 Asp. M. C. 473; 45 L. T. 623 ..... 44, 51, 370, 451
"Chimæra" (not reported), cited 8 P. D. 46, 131; 4 Jur. N. S. 172; 49 L. T. 89; 31 W. R. 738 78
"China," 7 Wall. 53 211
China Merchants' Steam Navigation Co. *v.* Bignold. See "Hochung" and "Lapwing."
"Ching Riang," (1908) A. C. 251; 77 L. J. P. C. 72 ..... 376, 378
"Chittagong," (1901) App. Cas. 597; 70 L. J. P. C. 121; 85 L. T. 430; 9 Asp. M. C. 252 403
Christian *v.* Coombe, 2 Esp. 489 289
"Christiana," 2 Hag. Ad. 183; nom. Hammond *v.* Rogers, 7 Moo. P. C. 160 ..... 201, 206, 220, 224, 229, 230, 232, 233, 234, 480, 481
"Christiansborg," 10 P. D. 141; 54 L. J. Ad. 84; 53 L. T. 612; 5 Asp. M. C. 491 211
"Christina," 3 W. Rob. 27; affd. nom. Petley *v.* Catto, 6 Moo. P. C. 371 ..... 172, 178, 187, 188, 283
Churchward *v.* Palmer. See "Vivid."
"Chusan," 53 L. T. 60; 5 Asp. M. C. 476 ..... 42, 342, 358, 450
"Ciampa Emilia," 53 Fed. Rep. 155 190
"Cincinnati," 95 Fed. Rep. 302 378
"Circassia," 55 Fed. Rep. 113 341
"Circe," (1906) P. 1; 93 L. T. 640; 74 L. J. P. 106; 10 Asp. M. C. 149 ..... 114, 133, 211, 297
"City of Alexandria," 40 Fed. Rep. 697 113
———————— (tug and tow), 31 Fed. Rep. 427 ..... 182, 369
"City of Antwerp," and "Friedrich," Inman *v.* Reck, L. R. 2 P. C. 25; 37 L. J. Ad. 25 ..... 4, 29, 34, 406, 461, 474
"City of Atlanta," 26 Fed. Rep. 456 429
"City of Augusta," 30 Fed. Rep. 844 109

PAGE
"City of Berlin," (1908) P. 110; 98 L. T. 298; 77 L. J. P. 76..292, 324, 386
"City of Brockton," 37 Fed. Rep. 897; aff. 42 Fed. Rep. 928 493
"City of Brooklyn," 1 P. D. 276; 34 L. T. 932; 24 W. R. 1056; 3 Asp. M. C. 230 .....359, 374, 376, 473
"City of Buenos Ayres," 25 L. T. 672; 1 Asp. M. C. 169..111, 163, 311, 312
"City of Cambridge" (costs), 35 L. T. 781; 3 Asp. M. C. 307..... 310
——————————— (pilot), L. R. 4 A. & E. 161; 43 L. J. Ad. 6; 29 L. T. 816; 22 W. R. 391; on app. L. R. 5 P. C. 451; 43 L. J. Ad. 11; 30 L. T. 439; 22 W. R. 578; 2 Asp. M. C. 193, 239..221, 229, 230, 253
"City of Carlisle," Br. & Lush. 363; 11 L. T. 33; 2 Mar. Law Cas. O. S. 91 341
"City of Delhi," 58 L. T. 531; 6 Asp. M. C. 269 533
"City of Hartford," 7 Bened. 350 413
——————————— and "Unit," 7 Otto, 323 ..... 182, 269
"City of Lincoln," 15 P. D. 15; 59 L. J. Ad. 1; 62 L. T. 49; 38 W. R. 345; 6 Asp. M. C. 475—C. A. 100, 104
"City of London," or "London," Morgan *v.* Sim, 11 Moo. P. C. 307; Swab. 245, 300; 5 W. R. 678.....2, 29, 289, 337, 340, 348
"City of Lynn," 11 Fed. Rep. 339 482
"City of Macon," 92 Fed. Rep. 207..... 327
"City of Manchester," 5 P. D. 3; 48 L. J. Ad. 70; 40 L. T. 591; on app. 5 P. D. 221; 49 L. J. Ad. 81; 42 L. T. 521; 4 Asp. M. C. 106, 261.....98, 305, 307
"City of Mecca," 5 P. D. 28; 41 L. T. 444; 28 W. R. 260; 49 L. J. Ad. 17; on app. 6 P. D. 106; 50 L. J. Ad. 53; 44 L. T. 750; 4 Asp. M. C. 412 213
——————————— 20 Fed. Rep. 159 491
——————————— . See Smith, *In re.*
"City of New York" (speed), 35 Fed. Rep. 604 376
——————————— (master), 25 Fed. Rep. 149..... 99
——————————— (tug and tow), 54 Fed. Rep. 181 180
"City of Paris," 14 Blatchf. 531 .....269, 485
——————————— 1 Bened. 174; 9 Wall. 634 .....3, 432, 440
"City of Peking" (No. 1) (eddy tide), 14 App. Cas. 40; 58 L. J. Ad. 64; 61 L. T. 136; 6 Asp. M. C. 396—P. C.....9, 12, 30, 480, 483, 492
——————————— (No. 2) (appeal; reference), 15 App. Cas. 438; 59 L. J. P. C. 88; 63 L. T. 722; 39 W. R. 177; 6 Asp. M. C. 572 111
"City of Philadelphia" *v.* Gavagnin, 62 Fed. Rep. 617 .....184, 494
"City of Seattle," 9 Canad. Exchq. Rep. 146 262
"City of Springfield," 26 Fed. Rep. 158..... 447
"City of Truro," 35 Fed. Rep. 317 34
"City of Washington," 2 Otto, 31 .....60, 352, 494
"Civilta" and "Restless," 13 Otto, 699.....167, 187, 269
"Clan Cumming," (1907) P. 311; 97 L. T. 14; 77 L. J. P. 1; 10 Asp. M. C. 436 528
"Clan Gordon," 7 P. D. 190; 46 L. T. 490; 30 W. R. 691; 4 Asp. M. C. 513 .....216, 219, 241
"Clan Sinclair." See "Margaret."
Clancy *v.* Harrison, 4 Victoria L. R. 437..... 63

PAGE
"Clara," 55 Fed. Rep. 1021 18
——— (cause of collision), 49 Fed. Rep. 765 323
——— 12 Otto, 200 ..... 31, 32
——— (lien), Swab. 1 79
"Clara Davidson," 24 Fed. Rep. 763 416
"Clara Killam," L. R. 3 A. & E. 161; 39 L. J. Ad. 50; 23 L. T. 27; 19 W. R. 25 77
——————— 2 Quebec L. R. 56 60
"Clarence" (damages), 1 Sp. 206 289
——— (port tack), 3 W. Rob. 283 ..... 100, 101, 102, 111, 113, 114
Claridge *v.* Staffordshire Tramways Co., (1892) 1 Q. B. 422 97
"Clarion," 27 Fed. Rep. 128 472
"Clarita" and "Clara," 23 Wall. 1 ..... 86, 182, 281, 484
Clark *v.* Chambers, 3 Q. B. D. 327 15
Clarke *v.* Beck, Seld. Ser. Admiralty, II. lxxxiii. 136
Clayards *v.* Dethick, 12 Q. B. D. 439 3
"Cleadon," 14 Moo. P. C. 92; Lush. 158; 4 L. T. 157; 1 Mar. Law Cas. O. S. 41 167
———. See "Creadon."
"Clement," 1 Sprague, 257; 2 Curtis, 363 437
"Cleopatra," Swab. 135 ..... 324, 396, 397, 399
Cleveland R. R. *v.* Steamship Co., 208 U. S. Rep. 316 77
"Clieveden," (1894) A. C. 625; 64 L. J. P. C. 22; 71 L. T. 101; 7 Asp. M. C. 489—P. C. 411, 503
"Clutha," 45 L. J. Ad. 108; 35 L. T. 36; 3 Asp. M. C. 225 299
"Clutha Boat 147," (1909) P. 36; 100 L. T. 198; 78 L. J. P. 41 .... 364, 442, 539
"Clydach," 51 L. T. 668; 5 Asp. M. C. 336 441
"Clyde," Swab. 23 ..... 101, 102
Clyde Navigation Co. *v.* Barclay, 1 App. Cas. 790; 36 L. T. 379; 3 Asp. M. C. 390—H. L. 222, 224, 231, 250, 473, 476
Clyde S. S. Co., *In re*, 134 Fed. Rep. 95 376
"Clymene," (1897) P. 295; 66 L. J. Ad. 152; 76 L. T. 811; 46 W. R. 109; 8 Asp. M. C. 287 ..... 243, 257
"Cockatrice," (1908) P. 182; 98 L. T. 728; 77 L. J. P. 74; 11 Asp. M. C. 50 357
"Coe F. Young," 49 Fed. Rep. 167 416
Coey *v.* Smith, 22 Ct. of Sess. Cas. 2nd ser. 955 273
"Coleman" and "Foster," Brown, Ad. 456 182
"Colgarth," Ship. Gaz., Nov. 3rd, 1906 468
"Colstrop," Ship. Gaz., Oct. 24th, 1908 460
"Collier," L. R. 1 A. & E. 83; 12 Jur. N. S. 789 84
"Collingrove," 10 P. D. 158; 54 L. J. Ad. 78; 53 L. T. 681; 34 W. R. 156; 5 Asp. M. C. 483 298
"Cologne" and "Ranger," Malcolmson *v.* General Steam Nav. Co., L. R. 4 P. C. 519; 9 Moo. P. C. N. S. 352; 27 L. T. 769; 21 W. R. 273; 1 Asp. M. C. 484 ..... 317, 402, 411, 447
"Colonia," 3 Not. of Cas. 13, note 324
"Colorado," 1 Otto, 692 381
——————— 59 Fed. Rep. 309 404

PAGE

Colthurst *v.* Sandall, Seld. Ser. Admiralty, II. lxxxiii. 136
"Columbia" (swell), 61 Fed. Rep. 220 498
——— (pilot boat), 27 Fed. Rep. 704 353
——— (flare), 27 Fed. Rep. 238 365
——— 10 Wall. 246 397
"Columbian," 100 Fed. Rep. 991 391
"Columbus," 1 Pritch. Ad. Dig. 3rd ed. 239 30
——— (pilot), 80 L. T. 203; 8 Asp. M. C. 488 ..... 243, 256
——— 2 Mar. Law Cas. O. S. Dig. 730 489
——— ferry), Abbot, Ad. 384 486
——— (damages), 3 W. Rob. 158 ..... 101, 102, 107, 112, 114
"Comet" and "Silver Spray," 9 Blatchf. 323; 22 L. T. 732 475
"Commerce," 3 W. Rob. 287 ..... 457, 461
——— 16 Wall. 33 416
"Commodore Jones," 25 Fed. Rep. 506 ..... 404, 462, 488
"Comus," 2 Dods. 464 94
Concha *v.* Concha, 11 App. Cas. 541; 56 L. J. Ch. 257; 55 L. T. 522; 35 W. R. 477 212
"Concordia," and "Esther," L. R. 1 A. & E. 93; 12 Jur. N. S. 771; 14 L. T. 896 ..... 317, 455, 462, 464
"Condor" and "Swansea." See "Swansea."
"Conoho," 24 Fed. Rep. 758 38
Conolly *v.* Ross, 11 Fed. Rep. 342 190
"Conqueror," 166 U. S. Rep. 110 112
Conservators of the Thames *v.* Hale, L. R. 3 C. P. 415; 37 L. J. C. P. 163; 18 L. T. 361; 16 W. R. 971 219
"Consett" (damages), 5 P. D. 229; 5 Asp. M. C. 34, n. 112, 309
——— (costs), 5 P. D. 52, 77; 49 L. J. Ad. 24; 42 L. T. 33; 28 W. R. 622; 4 Asp. M. C. 230 310
Consolidated Coal Co. *v.* "Admiral Schley," 115 Fed. Rep. 378 ... 169, 391
"Constantia," 62 L. T. 236; 6 Asp. M. C. 478; 38 W. R. 272 371
"Constantine," 4 P. D. 156; 27 W. R. 747—C. A. 311
"Constitution" (end on), 2 Moo. P. C. N. S. 453; 10 Jur. N. S. 831; 10 L. T. 894 ..... 393, 399
——— (foreign ship; salvage), 4 P. D. 39; 48 L. J. Ad. 13; 40 L. T. 219; 27 W. R. 739; 4 Asp. M. C. 79 209
"Continental," 14 Wall. 345 60
"Coogee," Vict. L. R. xxix. 874 ..... 316, 370, 451
Coombs *v.* Duncan, 1 Fed. Rep. 733 131
Cooper *v.* Breeze, Seld. Ser. Admiralty, II. lxxxiv. 138
Cope *v.* Doherty, 4 K. & J. 367; 6 W. R. 537; 31 L. T. 173; on app. 2 De G. & J. 614; 4 Jur. N. S. 699; 27 L. J. Ch. 600; 6 W. R. 695; 31 L. T. 307 ..... 146, 207, 208
"Cordilleras," (1904) P. 90; 89 L. T. 673; 73 L. J. P. 13; 9 Asp. M. C. 506 154
"Corennie" (narrow channel), (1894) P. 338, note 441
"Corinthian," (1909) P. 260; 101 L. T. 265; 78 L. J. P. 121 470
Cornwallis *v.* Noden, Seld. Ser. Admiralty, II. lxxxiv. 138
"Corsica," 9 Wall. 630 ..... 328, 414, 417, 432, 464
Cory & Son, Ltd. *v.* Kopajtic, 45 Sc. L. R. 216 ..... 316, 347

PAGE
"Cosmopolitan," 9 P. D. 35, n.; 5 Asp. M. C. 212, n. 295
Coupé Co. *v.* Maddick, (1891) 2 Q. B. 413; 60 L. J. Q. B. 676; 65 L. T. 489 70
"Courier" (jurisdiction), Lush. 541 ..... 199, 200
———— (costs), 80 L. T. 808; 8 Asp. M. C. 547 308
Courtney *v.* Cole, 19 Q. B. D. 447; 56 L. J. M. C. 141; 57 L. T. 409; 36 W. R. 8; 6 Asp. M. C. 169 ..... 255, 257
"Coxon," 2 Mar. Law Cas. O. S. Dig. 549 494
"Craigellachie," (1909) P. 1; 100 L. T. 415; 78 L. J. P. 81; 11 Asp. M. C. 213 407
Crandley *v.* Porteer, Seld. Ser. Admiralty, II. lxxxiv. 138
"Crathie," (1897) P. 178; 66 L. J. Ad. 93; 76 L. T. 534; 45 W. R. 631; 8 Asp M. C. 256 ..... 163, 166
Crawford *v.* Granite City S.S. Co., 43 Sc. L. R. 732 ..... 373, 420
"Creadon," 54 L. T. 880; 5 Asp. M. C. 585 ..... 26, 160, 225, 311
Creame *v.* Yaxley, Seld. Ser. Admiralty, II. lxxxiv. 137
"Crescent" and "Rowland Hill," Stuart's Vice-Ad. Rep. Lower Canada (Lond. 1858), 289 495
"Cricket" and "Endeavour," 48 L. T. 535; 5 Asp. M. C. 53 158
"Crimdon," (1900) P. 171; 69 L. J. Ad. 103; 82 L. T. 660; 48 W. R. 623; 9 Asp. M. C. 104 299
Croft *v.* Alison, 4 B. & Ald. 590 65
Cruse *v.* Wynn, Seld. Ser. Admiralty, II. lxxxiii. 136
"Crystal," (1894) A. C. 508; 63 L. J. Ad. 146; 71 L. T. 346; 7 Asp. M. C. 513—P. C. 82, 88, 91, 108, 163, 284
Cuba *v.* McMillan, 26 Sup. Ct. Canada, 651 ..... 441, 443
Culbertson *v.* Shaw, 18 How, 584 ..... 363, 477
"Cumberland," 5 L. T. 496 ..... 97, 293
——— ——— Stuart's Vice-Ad. Rep. Lower Canada (Lond. 1858), 75 179
Cunningham's case, Bell's C. C. 220 281
Cushing *v.* Owners of "John Fraser." See "James Grey."
Cuthbertson *v.* Parsons, 12 C. B. 304; 21 L. J. C. P. 165 70
"Cybele," 2 P. D. 224; 47 L. J. Ad. 13, on app. 3 P. D. 8; 47 L. J. Ad. 86; 37 L. T. 773; 26 W. R. 345; 3 Asp. M. C. 352—C. A. 94
———— 5 Quebec, L. R. 262 359
"Cynthia," 2 P. D. 52; 46 L. J. Ad. 58; 36 L. T. 184; 8 Asp. M. C. 378 ..... 90, 230, 231, 238
"Czar," 19 Lower Canada Jurist, 197 77

D.

"D. S. Gregory," 6 Blatchf. 528 ..... 484, 486
"D. S. Miller," 76 Fed. Rep. 877 30
"Daioz," 47 L. J. Ad. 1; 37 L. T. 137; 3 Asp. M. C. 477—C. A. 224, 308
Dale *v.* Hall, 1 Wils. 281 265
"Dallington," (1903) P. 77 218

PAGE

Dalton *v.* Angus, 6 App. Cas. 740; 50 L. J. Q. B. 689; 44 L. T. 844; 30 W. R. 191 68
——— *v.* Denton, 1 C. B. N. S. 672 33
Dalyell *v.* Tyrer, E. B. & E. 899; 28 L. J. Q. B. 52 ..... 66, 175
Daniel *v.* Metropolitan Rail. Co., L. R. 5 H. L. 45; 40 L. J. C. P. 121; 24 L. T. 815—H. L. 29, 37
"Dantzic," Br. & L. 102, 32 L. J. Ad. 161; 9 L. T. 236 270
Darrell *v.* Tibbits, 5 Q. B. D. 560; 50 L. J. Q. B. 33; 42 L. T. 797; 29 W. R. 66 276
"Dauntless," 116 Fed. Rep. 513 107
"David Dows," 16 Fed. Rep. 154 131
"David Morris," Brown, Ad. 273 5
Davidson *v.* Burnand, L. R. 4 C. P. 117; 38 L. J. C. P. 73; 19 L. T. 782; 17 W. R. 121—Ex. Ch. 272
Davidson *v.* Hill, (1901) 2 K. B. 606; 70 L. J. K. B. 788; 85 L. T. 118; 9 Asp. M. C. 223 210
Davies *v.* Davies, 9 C. & P. 252 290
——— *v.* Mann, 10 M. & W. 546 ..... 16—20, 46
Davis *v.* Saunders, 2 Chit. Rep. 639 2
"Daylesford," 30 Fed. Rep. 633 17
"De Brus," Ir. Rep. Ad. 1 Eq. 72 248
De Lovio *v.* Boit, 2 Gall 398 ..... 73, 200
De Vaux *v.* Salvador, 4 Ad. & El. 420; 6 N. & M. 713; 5 L. J. K. B. 134 ..... 121, 272
Dean *v.* Richards. See "Europa."
Delanoy *v.* Robson (or Anon.), 5 Taunt. 605 276
"Delaware," 54 Davis, 459 413
"Delta" and "Erminia Foscolo," 1 P. D. 393; 45 L. J. Ad. 111; 35 L. T. 376; 25 W. R. 46; 3 Asp. M. C. 256 ..... 211, 212
"Demetrius," L. R. 3 A. & E. 523; 41 L. J. Ad. 69; 26 L. T. 324; 20 W. R. 761; 1 Asp. M. C. 250 ..... 116, 290, 294, 296
Denison *v.* Seymour, 9 Wendel, 9 ..... 62, 270
Dennis *v.* Tovell, L. R. 8 Q. B. 10; 42 L. J. M. C. 33; 27 L. T. 482; 21 W. R. 170; 2 Asp. M. C. 402 69
"Desdemona," Swab. 158 78
"Despatch," Lush. 98; 11 Moo. P. C. 83; 3 L. T. 219 ..... 7, 104, 288, 481, 482, 485
——— (speed), Swab. 138 376
"Devonian," (1901) P. 221; 70 L. J. Ad. 66; 84 L. T. 675; 49 W. R. 665; 9 Asp. M. C. 179 ..... 45, 54, 174, 340, 344, 362
——— (narrow channel), 110 Fed. Rep. 588 495
"Dexter," 23 Wall. 69 326
"Diana" (salvage), 31 L. T. 203; 2 Asp. M. C. 366 ..... 12, 110, 472
——— (pilot), 1 W. Rob. 131; nom. Stuart *v.* Isemonger, 4 Moo. P. C. 11 ..... 81, 223, 224, 232, 472
——— (jurisdiction), Lush. 539; 9 Jur. N. S. 26; 32 L. J. Ad. 57; 7 L. T. 397; 11 W. R. 189 ..... 199, 200
——— and "Clieveden." See "Clieveden."
"Dictator" (No. 1) (amendment of writ), (1892) P. 64; 61 L. J. Ad. 72; 66 L. T. 863; 7 Asp. M. C. 175 296

PAGE
"Dictator" (bail), (1892) P. 304; 61 L. J. Ad. 73; 67 L. T. 563; 7 Asp. M. C. 251 ..... 80, 81, 296
"Digby Grand" (not reported) 125, 193
Dimes *v.* Petley, 15 Q. B. 276; 14 Jur. 113; 19 L. J. Q. B. 449 88
"Dimitri Donskoi," 60 Fed. Rep. 111 364
"Dione," 52 L. T. 61; 5 Asp. M. C. 347 156
Dixon *v.* Sadler, 5 M. & W. 405; on app. 8 M. & W. 895; 11 L. J. Ex. 435 272
Dobree *v.* Schroeder, 2 My. & Cr. 489 151
Dock Company of Hull *v.* Browne, 2 B. & Ad. 43 251
Dodds *v.* Embleton, 9 Dow. & Ry. 27 217
"Dolphin" and "Barbados Merchant," Martin *v.* Green, 1 Keb. 730.. 199
Don *v.* Lippmann, 5 Cl. & Fin. 1 198
Donnell *v.* Boston Towboat Co., 89 Fed. Rep. 757 ..... 429, 442
Doolan *v.* Midland Rail. Co., 2 App. Cas. 792; 37 L. T. 317; 25 W. R. 882; 3 Asp. M. C. 485 ..... 164, 270
"Dordogne," 10 P. D. 6; 54 L. J. Ad. 29; 51 L. T. 659; 33 W. R. 360; 5 Asp. M. C. 328 ..... 323, 374, 376, 378, 381, 382, 420, 421, 424, 429, 431
"Doris Eckhoff," 50 Fed. Rep. 134 183
——— ——— 41 Fed. Rep. 156 131
Dormont *v.* Furness Rail. Co., 11 Q. B. D. 496; 52 L. J. Q. B. 331; 49 L. T. 134; 5 Asp. M. C. 127 ..... 91, 335
Dorrington's Case, Sir Fr. Moore, 916 199
Dorvill *v.* Treasur, Seld. Ser. Admiralty, II. lxxxiv. 138
"Douglas," 4 Asp. M. C. 510; 46 L. T. 488; 51 L. J. Ad. 55; 30 W. R. 692; on app. 7 P. D. 151; 51 L. J. Ad. 89; 47 L. T. 502; 5 Asp. M. C. 15 ..... 26, 53, 88, 91, 160, 335
"Douglass," Brown, Ad. 105 475
Dowell *v.* General Steam Navigation Co., 5 E. & B. 195; 26 L. J. Q. B. 59; 1 Jur. N. S. 800; 3 W. R. 492 ..... 19, 59, 431
"Druid," 1 W. Rob. 391 ..... 65, 72, 83, 179
Duane *v.* Steam tug "Emma J. Kennedy," 5 Fed. Rep. 206.. 491
Dublin Port and Docks Board *v.* Shannon, Ir. Rep. 7 C. L. 116 ....214, 219
Dublin, Wicklow, and Wexford Rail. Co. *v.* Slattery, 3 App. Cas. 1155; 39 L. T. 365; 27 W. R. 191 ..... 21, 32
"Due d'Aumale," (1903) P. 18 285
"Duchesse de Brabant," Swab. 264; 6 W. R. 329 80
Duckham *v.* Gibbs, (1900) 1 Q. B. 394; 69 L. J. Q. B. 127; 48 W. R. 239 511
Dudgeon *v.* Pembroke, L. R. 9 Q. B. 581; 2 App. Cas. 284; 46 L. J. Q. B. 409; 36 L. T. 382; 25 W. R. 499; 3 Asp. M. C. 393—H. L... 272
Dudman and Brown *v.* Dublin Port and Docks Board, Ir. Rep. 7 C. L. 518 ..... 24, 93, 192, 222
"Due Checchi," L. R. 4 A. & E. 35, n.; 26 L. T. 593; 20 W. R. 686; 1 Asp. M. C. 294 289
"Duke of Buccleugh" (regulations), (1891) App. Cas. 310; 65 L. T. 422; 7 Asp. M. C. 68—H. L. 42, 43, 341, 312, 313
——— ——— (substituting plaintiff), (1892) P. 201; 61 L. J. Ad. 57; 40 W. R. 455; 7 Asp. M. C. 294—C. A. 294

PAGE

"Duke of Cornwall," 1 Pr. Ad. Dig., 3rd ed. 201 ..... 485, 498
"Duke of Manchester," 10 Jur. 863; 2 W. Rob, 470; 4 Not. of Cas. 575; on app. nom. Shersby *v.* Hibbert, 6 Moo. P. C. 90; 5 Not. of Cas. 470 ..... 188, 237
"Duke of Sussex" (pilot; tug), 1 Not. of Cas. 161; 1 W. Rob. 270 ..... 172, 177, 178, 187, 235
——————— (navigation), 1 W. Rob. 274; 1 Not. of Cas. 165.. 314, 324, 440, 447
"Duke of Sutherland." See "Magnet."
"Dumfries," Swab. 63; on app. *ibid.* 125; 10 Moo. P. C. 461 ..... 201, 205, 324
"Duna," 5 L. T. 217 78
"Dundee" (limitation; year), 1 Hag. Ad. 109 .... 2, 68, 75, 86, 146, 150, 151, 202, 297
——————— (interest; costs), 2 Hag. Ad. 137 163
"Dunelm," 9 P. D. 164; 32 W. R. 970; 53 L. J. Ad. 81; 51 L. T. 214; 5 Asp. M. C 304 ..... 320, 343, 358, 363, 450
"Dunlossit," Currie *v.* M'Knight, (1897) App. Cas. 97; 66 L. J. P. C. 19; 75 L. T. 457; 8 Asp. M. C. 193—H. L. 65, 74, 75, 77, 82
Dunn *v.* Bucknall Bros., (1902) 2 K. B. 614; 87 L. T. 497; 71 L. J. K. B. 963; 9 Asp. M. C. 336; 8 Com. Cas. 33 114
"Dunstanborough," (1892) P. 363, n. 14, 22, 122, 124, 474, 476, 533
"Dura," 1 Pritch. A. Dig. 174 477
"Dutchess," 6 Bened. 48 482
"Dwina," 1892) P. 58; 61 L. J. Ad. 71; 66 L. T. 862; 7 Asp. M. C. 173 282

E.

"E. A. Packer," 49 Fed. Rep. 92 ..... 174, 190
"E. E. Simpson," 60 Fed. Rep. 452 189
"Earl of Auckland," Lush. 164; 30 L. J. Ad. 121; 3 L. T. 786; on app. Lush. 387; 15 Moo. P. C. 304; 5 L. T. 558; 10 W. R. 124.... 215, 244, 246, 247, 254, 256, 257
"Earl of Dumfries," "Boskenna Bay" and (fog), 5 Asp. M. C. 329, n. 373, 383
"Earl Grey," 1 Sp. 180 312
"Earl Spencer," L. R. 1 A. & E. 431; 32 L. T. 370; 23 W. R. 661; 2 Asp. M. C. 523; affd. 33 L. T. 235; 3 Asp. M. C. 4..292, 359, 473, 480
"Earl Wemyss," 61 L. T. 239; 6 Asp M. C. 407—C. A.....332, 386, 387, 388, 390, 414
"East Lothian," Lush. 241; 14 Moo. P. C. 177; 4 L. T. 487 288
"Ebenezer," 2 W. Rob. 206 ..... 287, 382
"Ebor," 11 P. D. 25; 54 L. T. 200; 34 W. R. 448; 5 Asp. M. C. 560—C. A. 306, 323, 376, 419, 429
"Echo," 7 Bened. 70 189

PAGE
"Echo," 19 Fed. Rep. 453 491
"Eclipse" and "Saxonia." See "Saxonia."
"Economy," 1 Pritch. Ad. Dig. (3rd ed.) 286 238
"Ecossaise," Ship. Gaz., Dec. 15th, 1885 444
"Eden," 2 W. Rob. 442; 10 Jur. 296 .....214, 217, 243, 244, 250, 262
"Edgwater," 65 Fed. Rep. 527..... 18
"Edith," Ir. Rep. 10 Eq. 345 358
Edwards, Robertson & Co. *v.* Falmouth Harbour Commissioners. See "Rhosina."
"Edwin Hawley," 41 Fed. Rep. 606 .....11, 90, 190
"Effort," 5 Not. of Cas. 279 495
"Egerateia," 38 L. J. Ad. 40; 20 T. T. 961..... 298
Eglington, Earl *v.* Norman, 46 L. J. Ex. 557; 36 L. T. 888; 25 W. R. 656; 3 Asp. M. C. 471—C. A. 82, 88, 276
"Egyptian," 1 Mar. Law Cas. O. S. 368; on app. 1 Moo. P. C. N. S. 373; 9 Jur. N. S. 1159; 8 L. T. 776.....479, 480
———— (damages), 2 Mar. Law Cas. O. S. 56; 10 L. T. 910 108
"Eleanor" and "Alma," 2 Mar. Law Cas. O. S. 240..30, 390, 391, 438, 487
"Electra," 1 Bened. 282..... 369
———— 6 Bened. 189..... 11
"Eleonora," 17 Blatchf. 83.....269, 334
"Eleonore," Br. & L. 185; 33 L. J. Ad. 19; 9 L. T. 397; 12 W. R. 218 312
"Elin," 8 P. D. 39; 51 L. J. Ad. 77; on app. 8 P. D. 129; 52 L. J. Ad. 55; 49 L. T. 87; 31 W. R. 736; 5 Asp. M. C. 120—C. A. 78
"Elina," 5 P. D. 237, n. 106
"Eliza," and "Orinoco," Holt, 98 .....58, 455
"Eliza Jane," 3 Hag. 335..... 200
"Eliza Keith" and "Langshaw," 3 Quebec L. R. 143.....42, 131
"Elizabeth," 3 L. T. 159 205
———— and "Adalia," 22 L. T. 74; 3 Mar. Law Cas. O. S. 345.. 4
"Elizabeth Jones," 5 Dav. 514 .....5, 414
"Ellen S. Terry," 7 Bened. 401..... 495
Elmore *v.* Hunter, 3 C. P. D. 116; 47 L. J. M. C. 8; 38 L. T. 179; 3 Asp. M. C. 555 511
Elwill *v.* Wiggett (not reported)..... 199
"Elysia," 46 L. T. 840; 4 Asp. M. C. 540 ..... 371, 382
Emery *v.* Huntington, 12 Amer. Rep. 725 279
"Emily B. Maxwell," 96 Fed. Rep. 199..... 388
"Emma," 2 W. Rob 315 289
"Emma Kate Ross," 50 Fed. Rep. 815 111
"Emmy Hause," 9 P. D. 81; 53 L. J. Ad. 43; 50 L. T. 372; 32 W. R. 880, 5 Asp. M. C. 216 .....46, 54, 58, 429, 430
"Emperor," 46 Fed. Rep. 143..... 36
———— and "Lady of the Lake," Holt, 37, 202 .....341, 312
———— and "Zephyr," 12 W. R. 890 290
"Empire State," Whitney *v.* "Empire State," 1 Bened. 57..387, 416, 488, 489
"Empress Eugénie," Lush. 138 .....107, 110
"Empusa," 5 P. D. 6; 48 L. J. Ad. 36; 41 L. T. 383; 28 W. R. 263; 4 Asp. M. C. 185 .....158, 166, 300, 311, 312

PAGE

"Endeavour." See "Cricket."

——— ——— No. 2, damages, 62 L. T. 840; 6 Asp. M. C. 511 101

"Energia," 56 Fed. Rep. 124 417

——— ——— 66 Fed. Rep. 604 113

"Energy," 42 Fed. Rep. 301 .....44, 370

——— ——— L. R. 3 A. & E. 48; 39 L. J. Ad. 25; 23 L. T. 601; 18 W. R. 1009....24, 27, 125, 175, 189, 190, 192, 193, 197, 222, 227, 231, 234

"Engineer," Tatham *v.* Burr, (1898) App. Cas. 382; 67 L. J. Ad. 61; 78 L. T. 473; 8 Asp. M. C. 401—H. L. 108, 273

"England," 5 Not. of Cas. 170..... 287, 288

Englehart *v.* Farrant, (1897) 1 Q. B. 240 15

"Englishman" (lights), 3 P. D. 18; 47 L. J. Ad. 9; 37 L. T. 412; 3 Asp. M. C. 506 ..... 59, 206, 358

——— ——— and "Australia" (No. 1, tug and tow), (1894) P. 239; 63 L. J. Ad. 133; 70 L. T. 846; 43 W. R. 62; 6 R. 743; 7 Asp. M. C. 603.....126, 132, 161, 170, 176, 179, 182, 193

——— ——— ——— ——— (No. 2, assignment of judgment), 1895) P. 212; 64 L. J. Ad. 74; 72 L. T. 203; 43 W. R. 670; 7 Asp. M. C. 605.....132, 176

"Enrique, Stockton," V. Ad. Dig. Canada, 157 115

"Eolides," 3 Hag. Ad. 367 106

"Erandio," 163 Fed. Rep. 435 11

"Erastus Corning," 25 Fed. Rep. 572 472

"Erastus Wiman," 20 Fed. Rep. 215 34

"Ericsson," Swab. 38..... 324

"Esk" and "Gitana," L. R. 2 A. & E. 350; 38 L. J. Ad. 33; 20 L. T. 587; 17 W. R. 1064 .....340, 362, 363

——— and "Niord," L. R. 3 C. P. 436; 7 Moo. P. C. N. S. 276; 24 L. T. 167; 1 Asp. M. C. 1 .....327, 402, 411, 446, 447

"Essequibo," 13 P. D. 51; 57 L. J. Ad. 29; 58 L. T. 596; 6 Asp. M. C. 276 ..... 359, 360

"Etna," (1908) P. 269; 98 L. T. 424; 77 L. J. P. 138; 11 Asp. M. C. 30 .....458, 459, 460

"Etruria," 88 Fed. Rep. 555 501

"Ettrick," Prehn *v.* Bailey, 6 P. D. 127; 44 L. T. 817; 4 Asp. M. C. 465; on app. 45 L. T. 399; affirming, 50 L. J. Ad. 65 ....151, 163, 279, 281, 283, 284

"Europa" (fog), 14 Jur. 627 .....6, 374, 477

——— ——— (evidence), 13 Jur. 855 290

——— ——— (lien), Dean *v.* Richards, Br. & Lush. 89; 2 Moo. P. C. N. S. 1; 32 L. J. Ad. 188; 9 Jur. N. S. 699; 8 L. T. 368 ..... 73, 74

——— ——— (marshal's charges), Br. & L. 210; 9 L. T. 781 73

——— ——— (bill of lading), (1908) P. 84; 98 L. T. 246; 77 L. J. P. 26; 11 Asp. M. C. 19 267

"European," 10 P. D. 99; 54 L. J. Ad. 61; 52 L. T. 868; 33 W. R. 937; 5 Asp. M. C. 417 25

——— ——— (practice), Williams & Bruce, Adm. Pr. (3rd ed.) 354.... 288

European and Australian Royal Mail Co. *v.* Peninsular and Oriental Steam Nav. Co., 12 Jur. N. S. 999; 14 L. T. 704; 14 W. R. 843.... 319

"Evangelismos," Xenos *v.* Aldersley, Swab. 378; 12 Moo. P. C. 352 ..... 298, 307

PAGE

"Evangelistria," 46 L. J. Ad. 1; 35 L. T. 410; 25 W. R. 255; 3 Asp. M. C. 264 199
Everard *v.* Kendall, L. R. 5 C. P. 428; 39 L. J. C. P. 234; 22 L. T. 408; 18 W. R. 892 303
Ewer *v.* Ambrose, 4 B. & C. 25 290
"Excelsior," L. R. 2 A. & E. 268; 37 L. J. Ad. 54; 19 L. T. 87 .... 77, 90, 238, 476, 480, 481
——— ——— 39 Fed. Rep. 393 335
Excelsior Co. *v.* Smith, 2 L. T. 90 273
"Exchange," 10 Blatchf. 168 ..... 384, 484
"Explorer," L. R. 3 A. & E. 289; 40 L. J. Ad. 41; 23 L. T. 604; 19 W. R. 166 ..... 210, 211
——— ——— 20 Fed. Rep. 135 132
"Express" (lights), 48 Fed. Rep. 323 ..... 363, 369
——— ——— 52 Fed. Rep. 890 ..... 126, 185, 193

F.

"F. & P. M." (No. 1), 45 Fed. Rep. 703 ..... 30, 493
——— ——— (No. 2), 44 Fed. Rep. 698 447
"F. W. Wheeler," 78 Fed. Rep. 824 185
Fabre *v.* Cunard Steamship Co., 53 Fed. Rep. 288 429
"Faedrelandet," (1895) P. 205; 64 L. J. Ad. 122; 72 L. T. 650; 8 Asp. M. C. 1 ..... 340, 347, 362, 363
Fairless *v.* Thorsen. See "Good Intent" 200
"Fairport," 8 P. D. 48; 52 L. J. Ad. 21; 48 L. T. 536; 31 W. R. 616; 5 Asp. M. C. 62 74
"Fairy," 1 Sp. 298 40
"Falcon," 19 Wall. 75 ..... 3, 106
"Falk," 47 L. T. 308; 4 Asp. M. C. 592 ..... 80, 293
"Falkland" and "Navigator," Br. & Lush. 204; 1 Moo. P. C. N. S. 379; 9 Jur. N. S. 1113; 9 L. T. 1 ..... 292, 439, 487
"Fama," 2 W. Rob. 184 ..... 217, 246
"Fannie," 11 Wall. 238 476
"Fannie Tuthill," 17 Fed. Rep. 87 110
"Fanny M. Carvill," L. R. 4 A. & E. 417, 422; 44 L. J. Ad. 1; 23 W. R. 598; on app. 13 App. Cas. 455, n.; 44 L. J. Ad. 34; 32 L. T. 646; 24 W. R. 62; 2 Asp. M. C. 565 ..... 41, 59, 511
Fantley *v.* King, "John" and "Merry Rose" 139
"Farewell," 8 Quebec L. R. 87 ..... 167, 196, 415, 440
Farr *v.* "Farnley," 1 Fed. Rep. 631 34
"Farragut," 10 Wall. 334 ..... 54, 60, 472
"Favorita," 18 Wall. 598 ..... 3, 490
Faye *v.* Graham, "Three Relations" and "Britannia," Marsd. Ad. Cu. 331 142
"Fenham," L. R. 3 P. C. 212; 6 Moo. P. C. N. S. 501; 23 L. T. 329 .. 16, 29, 41, 44, 330

PAGE

Fenton *v.* Dublin Steam Packet Co., 8 Ad. & El. 835; 1 P. & D. 103; 8 L. J. Q. B. 28 ..... 66, 175
Fenwick *v.* Bell, 1 C. & K. 312 292
Ferguson *v.* Mahon, 11 Ad. & El. 179 212
——— and Hutchinson, *Ex parte*, L. R. 6 Q. B. 280; 40 L. J. Q. B. 105; 24 L. T. 96; 19 W. R. 746; 1 Asp. M. C. 8 ..... 58, 59, 304, 319
"Fidelity," 16 Blatchf. 569 94
"Figlia Maggiore," L. R. 2 A. & E. 106; 37 L. J. Ad. 52; 18 L. T. 532 271
"Fire Queen," 12 P. D. 147; 56 L. J. Ad. 90; 57 L. T. 312; 36 W. R. 15; 6 Asp. M. C. 146 ..... 51, 55, 359
Fisk *v.* City of New York, 119 Fed. Rep. 256 112
Flanigen *v.* Washington Insurance Co., 7 Barr. 306 241
Fletcher *v.* Braddick, 2 Bos. & P. N. R. 182 ..... 67, 270
"Fletcher" and "Grapeshot," 42 Fed. Rep. 504 110
"Flint," 6 Not. of Cas. 271 ..... 464, 492, 493
"Flora," Ad. Ct. 28th June, 1815 145
——— (arrest of cargo), L. R. 1 A. & E. 15; 35 L. J. Ad. 15; 14 L. T. 192 ..... 75, 80
"Florence P. Hall," 14 Fed. Rep. 408 ..... 7, 32, 34
Flower *v.* Bradley, 44 L. J. Ex. 1; 31 L. T. 702; 23 W. R. 74; 2 Asp. M. C. 489 295
"Flying Fish, H.M.S.," Br. & Lush. 436; 3 Moo. P. C. N. S. 77; 34 L. J. Ad. 113; 2 Mar. Law Cas. O. S. 221 ..... 105, 108
"Fontana," 119 Fed. Rep. 853 102
Forbes *v.* Lee Conservancy Board, 4 Ex. D. 116; 48 L. J. Q. B. 402; 27 W. R. 688 90
"Fork, H.M.S.," 2 Pr. Ad. Dig. 3rd ed. 1761 113
"Fort Lee," 31 Fed. Rep. 570 33
Forward *v.* Pittard, 1 T. R. 27 265
Foscolino, 52 L. T. 866; 5 Asp. M. C. 420 299
"Foyle," Lush. 10 290
France *v.* Gaudet, L. R. 6 Q. B. 199 114
"Francis," 44 Fed. Rep. 510 18
"Francis King," 7 Bened. 11 189
Franckes *v.* Dingslach (not reported) 139
"Franconia" (damages), 16 Fed. Rep. 149 ..... 107, 193
——— ——— Harris *v.* Hamburg, &c. Gesellschaft, Owners of the F. service of writ, 2 C. P. D. 173; 46 L. J. C. P. 363 201
——— ——— (overtaking ship), 2 P. D. 8; 35 L. T. 721; 25 W. R. 197; 3 Asp. M. C. 295—C. A. 66, 328, 397, 414, 431, 435, 437, 497
——— ——— ——— (jurisdiction; loss of life), 2 P. D. 163; 46 L. J. Ad. 71; 36 L. T. 640; 25 W. R. 796; 3 Asp. M. C. 435—C. A. 297
——— ——— ——— (limitation), Hamburg, &c. Gesellschaft *v.* Burrell, 38 L. T. 719; 26 W. R. 743; on app. 3 P. D. 164; 39 L. T. 57; 27 W. R. 218; 4 Asp. M. C. 1 156
——— ——— (criminal jurisdiction). See Reg. *v.* Keyn.
——— ——— 4 Bened. 181 381
"Frank," 2 Quebec L. R. 295 382
"Frank P. Lee," 34 Fed. Rep. 480 365

PAGE

"Frankland," L. R. 3 A. & E. 511; 41 L. J. Ad. 3; 25 L. T. 889; 20 W. R. 592; 1 Asp. M. C. 207 286
——————— and "Kestrel," 9 Moo. P. C. N. S. 365; L. R. 4 P. C. 529; 27 L. T. 633; 1 Asp. M. C. 489 ..... 124, 378, 429, 432
——————— (1901) P. 161; 84 L. T. 395; 70 L. J. Ad. 42; 9 Asp. M. C. 196 ..... 95, 121, 131, 132
"Franz Sigel," 14 Blatchf. 480; 6 Bened. 550 492
Frayes *v.* Worms, 10 C. B. N. S. 149 212
Frazer *v.* Cuthbertson, 6 Q. B. D. 93; 50 L. J. Q. B. 277; 29 W. R. 396 64
"Fred," 72 L. T. 523; 7 Asp. M. C. 550 292
"Fred. Jansen," 49 Fed. Rep. 254 492
"Fred. W. Chase," 31 Fed. Rep. 91 167
"Free State," Brown, Ad. 251; 1 Otto, 200 ..... 320, 327, 431, 449
"Freedom," L. R. 3 A. & E. 495; 41 L. J. Ad. 1; 25 L. T. 392; 1 Asp. M. C. 136 ..... 80, 271, 297
Fretz *v.* Bull, 12 How. 466 498
"Friedeberg," 10 P. D. 112; 54 L. J. Ad. 75; 52 L. T. 837; 33 W. R. 687; 5 Asp. M. C. 426 309
"Friends," 4 Moo. P. C. 314; aff. 1 W. Rob. 478 ..16, 123, 314, 417, 455
"Friends Goodwill" and "Peggy," Stoker *v.* Hutton, Marsd. Ad. Cas. 328 ..... 141, 145, 293
"Frostburg," 25 Fed. Rep. 451 107
"Fulda," 31 Fed. Rep. 351 ..... 322, 491
"Fyenoord," Swab. 374 ..... 205, 317, 445, 504

G.

Gadney *v.* Rough, 40 L. T. 258; 4 Asp. M. C. 73 534
"Gætano" and "Maria," 7 P. D. 1; 51 L. J. Ad. 7; 45 L. T. 510; 30 W. R. 108; on app. 7 P. D. 137; 51 L. J. Ad. 67; 46 L. T. 835; 30 W. R. 766; 4 Asp. M. C. 535—C. A. 146
Gaffner *v.* Pigott, 116 Fed. Rep. 486 ..... 28, 437
"Gala" and "Zenobia," Holt, 112 405
"Galatea," 2 Otto, 439 ..... 182, 490
Gale *v.* Laurie, 5 B. & C. 156; 7 D. & R. 711 ..... 146, 150, 151
"Gamma," 103 Fed. Rep. 703 ..... 23, 497
Gannet, (1900) App. Cas. 234; 69 L. J. Ad. 49; 82 L. T. 329; 9 Asp. M. C. 43 ..... 43, 52, 292, 336, 363
Gardiner *v.* Bright, Seld. Ser. Admiralty, II. lxxxiii. 136
Garnett *v.* Bradley, L. R. 3 App. Cas. 944 312
"Garston" Sailing Ship Co. *v.* Hickie, 18 Q. B. D. 17; 56 L. J. Q. B. 38; 55 L. T. 879; 35 W. R. 33; 6 Asp. M. C. 71—C. A. 267
"Gazelle" (customary track), 1 W. Rob. 471 ..... 292, 447
——————— (damages), 2 W. Rob. 279 101
"Geelong," Ship. Gaz., March 5th, 1908 379
"Gemma," (1899) P. 285; 68 L. J. Ad. 110; 81 L. T. 379; 8 Asp. M. C. 585—C. A. 80, 296

PAGE

"General," 82 Fed. Rep. 830 472
"General Birch," 6 Quebec L. R. 300 51
"General De Caen," Swab. 9 ..... 226, 228
"General Gordon" (costs), 63 L. T. 117; 6 Asp. M. C. 533; on app. 68 L. T. 469; 7 Asp. M. C. 317 ..... 306, 391, 477
——— (sufficiency of crew), 68 L. T. 469; 7 Asp. M. C. 317 391
General Iron Screw Collier Co. *v.* Moss. See "Araxes."
——— *v.* Schurmanns, 1 J. & H. 180; 29 L. J. Ch. 877; 6 Jur. N. S. 883; 4 L. T. 138; 8 W. R. 732 ..... 163, 207, 208
"General Lee," 32 Fed. Rep. 830 457
——— 19 L. T. 750; 3 Mar. Law Cas. O. S. 204 ..... 469, 414, 432
General Mutual Insurance Co. *v.* Sherwood, 14 How. 351 272
"General Parkill" and "Centurion," 1 Pritch. Ad. Dig. 1410 232
General Steam Navigation Co. *v.* British and Colonial Steam Navigation Co., L. R. 3 Ex. 330; 37 L. J. Ex. 194; 19 L. T. 357; 17 W. R. 615; on app. L. R. 4 Ex. 238; 38 L. J. Ex. 97; 20 L. T. 581; 17 W. R. 741 Ex. Ch. 216, 220, 244, 257
——— *v.* Gillon, 11 M. & W. 877; 13 L. J. Ex. 168 ..... 203, 212
——— *v.* London and Edinburgh Shipping Co., 2 Ex. Div. 467; 47 L. J. Q. B. D. 77; 36 L. T. 743; 25 W. R. 694; 3 Asp. M. C. 454 ..... 307, 308
——— *v.* Mann, 14 C. B. 127 324
——— *v.* Morrison. See Morrison *v.* &c.
——— *v.* Tonkin. See "Friends."
"General U. S. Grant," 6 Bened. 465 ..... 324, 416
"General Wm. McCandlass," 6 Bened. 223 493
"George" (pilot), 2 W. Rob. 386; 4 Not. of Cas. 161; 9 Jur. 670 .. 230, 384
——— and "Lidskjalf," Swab. 147 479
"George and Richard," L. R. 3 A. & E. 466; 24 L. T. 717; 20 W. R. 245; 1 Asp. M. C. 50 ..... 97, 104
"George Arkle," Lush. 382 – P. C. 340
"George Gordon," 9 P. D. 46; 53 L. J. Ad. 28; 50 L. T. 371; 32 W. R. 596; 5 Asp. M. C. 216 312
"George Law," 3 Bened. 396 493
"George Murray," 22 Fed. Rep. 117 472
"George Roper," 8 P. D. 119; 52 L. J. Ad. 69; 49 L. T. 185; 31 W. R. 953; 5 Asp. M. C. 134 ..... 3, 22, 499
"George W. Roby," 111 Fed. Rep. 601 112
Georgian Bay Transportation Co. *v.* Fisher, 5 Tupper (Ontario), 383 155
"Georgiana" and "Anglican," 21 W. R. 280 111
"Gere," (1909) P. 287; 100 L. T. 620; 78 L. J. P. 130 444
"Germania," 37 L. J. Ad. 59; 19 L. T. 20; 21 L. T. 44; 3 Mar. Law Cas. O. S. 269 ..... 206, 472
——— 1 Maude & Pollock on Sh. 4th ed. 606 n. (*i*) 317, 318
"Germanic," (1896) P. 84; 65 L. J. Ad. 53; 73 L. T. 730; 44 W. R. 394; 8 Asp. M. C. 116—C. A. 295
——— Ad. Ct. Feb. 1896 378
"Germany," 2 Stuart (V. Ad. Canada), 158 42

PAGE

"Gertor," 70 L. T. 703; 7 Asp. M. C. 472 ..... 14, 25, 114, 180
"Gertrude," 12 P. D. 204; 13 *ibid.* 105; 56 L. J. Ad. 106; 57 L. T. 883; 59 *ibid.* 251; 36 W. R. 191, 616; 6 Asp. M. C. 224, 315 103
"Gettysburg," 52 L. T. 60; 5 Asp. M. C. 347 75
"Gevalia." 39 Fed. Rep. 47 ..... 482, 485
Gilbert *v.* Corporation of Trinity House, 17 Q. B. D. 795; 56 L. J. Q. B. 85; 35 W. R. 30 88
"Gilson," 35 Fed. Rep. 333 ..... 109, 126
"Gipsy," 19 How. 56 363
"Gipsy King," 2 W. Rob. 537; 5 Not. of Cas. 282 .. 14, 178, 196, 230, 480
"Giraffe," 1 Pritch. Ad. Dig. 3rd ed. 234, 235 54
"Girolamo," 3 Hag. Ad. 169 ..... 82, 206, 208, 230, 231, 236, 380
"Gjessing," and "Hansa." See "Hansa."
"Gladiator," 79 Fed. Rep. 445 ..... 169, 182
Gladholm *v.* Barker, L. R. 1 Ch. 223; 35 L. J. Ch. 259; 13 L. T. 653; 14 W. R. 296 161
"Gladys," (1910) P. 13; 79 L. J. P. 5 ..... 404, 407, 451
"Glamorganshire," 13 App. Cas. 454; 59 L. T. 572; 6 Asp. M. C. 344—P. C. 52
"Glannibanta," 1 P. D. 283; 46 L. J. Ad. 75; 34 L. T. 934; 24 W. R. 1033; 3 Asp. M. C. 233—C. A. 311, 472
"Glannystwyth," (1899) P. 118; 68 L. J. Ad. 37; 80 L. T. 204; 8 Asp. M. C. 513 ..... 251, 257
"Glasgow," Swab. 145; 12 Moo. P. C. 355 n.; 2 Jur. N. S. 1147; 5 W. R. 10 298
"Gleaner," 38 L. T. 650; 3 Asp. M. C. 582 113
"Glengaber," L. R. 3 A. & E. 534; 41 L. J. Ad. 84; 27 L. T. 386; 21 W. R. 168; 1 Asp. M. C. 401 ..... 281, 282
"Glengariff," (1905) P. 106; 93 L. T. 281; 74 L. J. P. 90; 10 Asp. M. C. 103 412
"Glengarry," 2 P. D. 235 (note); 43 L. J. Ad. 37; 30 L. T. 341; 23 W. R. 110; 2 Asp. M. C. 230 ..... 499, 500
"Globe," 6 Not. of Cas. 275 493
Godard *v.* Gray, L. R. 6 Q. B. 139; 40 L. J. Q. B. 62; 24 L. T. 89; 19 W. R. 348 212
"Godiva," 11 P. D. 20; 55 L. J. Ad. 13; 54 L. T. 55; 34 W. R. 551; 5 Asp. M. C. 524 287
Goldsmith *v.* Slattery, 63 L. T. 273; 6 Asp. M. C. 561 544
Good *v.* London Steamship Owners' Mutual Protecting Association, L. R. 6 C. P. 563; 20 W. R. 33 162
"Good Intent" and "Prince Christian," Fairless *v.* Thorsen, Marsd. Ad. Ca. 130 200
Goodyne *c.* Tompkins 199
"Gordon," 11 Lower Canada Jurist, 109 232
"Governor," Abbot, Ad. 108 ..... 104, 436
"Govino," 6 Quebec L. R. 57 ..... 60, 103
Grainger *v.* Martin, 4 B. & S. 9; 8 L. T. 796; 11 W. R. 758, affirming 2 B. & S. 456; 8 Jur. N. S. 995; 31 L. J. Q. B. 186 151
"Granite State," 3 Wall. 310 ..... 363, 477
"Gray Eagle," 9 Wall. 505 60

PAGE

"Gray Eagle," 1 Bissel, 476; 2 *ibid.* 25.... 335
"Great Eastern," Holt, 169 290
——— ——— 3 Moo. P. C. N. S. 31; 11 L. T. 5; 2 Mar. Law Cas. O. S. 97 .....327, 386, 414, 418, 453
Green *v.* New River Co., 4 T. R. 589 68
Greenland *v.* Chaplin, 5 Ex. 243; 19 L. J. Ex. 293; 15 L. T. 185..13, 15, 28
Greenock Towage Co. *v.* Hardie, 4 Ct. of Sess. Cas. (Fraser) 215 236
"Greenpoint," 31 Fed. Rep. 231 .....23, 485
——— ——— 18 Fed. Rep. 186 .....238, 484
Greer *v.* Poole, 5 Q. B. D. 272; 49 L. J. Q. B. 463; 42 L. T. 687; 28 W. R. 582; 4 Asp. M. C. 300 283
Gregory *v.* Jones, 90 L. T. 42 .....245, 246
"Grenadier," and "August Korff," 74 Fed. Rep. 974 .....46, 383
"Greta Holme," "Emerald," (1896) P. 192; 7 Asp. M. C. 138; reversed (1897) App. Cas. 596; 66 L. J. Ad. 166; 77 L. T. 231; 8 Asp. M. C. 317—H. L..... 111
"Griefswald," Swab. 430 .....199, 212, 213, 293
Grill *v.* General Iron Screw Collier Co., L. R. 3 C. P. 476; 37 L. J. C. P. 205; 18 L. T. 485; 16 W. R. 796—Ex. Ch. 66, 108, 267, 268, 269, 272, 280
"Grube" *v.* Stagg, Seld. Ser. Admiralty, H. lxxxiv. 137
"Guldfaxe," L. R. 2 A. & E. 325; 38 L. J. Ad. 12; 19 L. T. 748; 17 W. R. 578 .....211, 297
"Guildhall," (1908) P. 29; 98 L. T. 7; 77 L. J. P. 52; 10 Asp. M. C. 585; on app., (1908) A. C. 159; 98 L. T. 763; 77 L. J. P. 113..... 541
Gull *v.* Carswell, Marsd. Ad. Cas. 295.....95, 140
"Gustaf," Lush. 506; 31 L. J. Ad. 207; 6 L. T. 660..... 78
———. See "New Ed."
"Gustafsberg," (1905) P. 10; 92 L. T. 630; 74 L. J. P. 42; 10 Asp. M. C. 61 449
"Guyandotte," 39 Fed. Rep. 575..... 472
"Guy Mannering," 7 P. D. 52; 51 L. J. Ad. 17; 46 L. T. 110; 30 W. R. 523; on app. 7 P. D. 132; 51 L. J. Ad. 57; 30 W. R. 835; 4 Asp. M. C. 558—C. A.....204, 218, 241, 528
"Gypsum Prince," 67 Fed. Rep. 612 34

H.

"H. F. Dimock," 77 Fed. Rep. 226 .....376, 378
"H. M. Whitney," 86 Fed. Rep. 697 182
"H. P. Baldwin," Brown, Ad. 300 .....463, 475
"H. S. Nichols," 53 Fed. Rep. 665 88
"H. W. Hills," 21 Fed. Rep. 727 337
Haberdyne *v.* Reeve, Seld. Ser. Admiralty, H. lxxxiv. 138
"Hackensack," 32 Fed. Rep. 800..... 493
——— ——— 5 Fed. Rep. 121 497

PAGE
Hadgraft *v.* Hewith, L. R. 10 Q. B. 350; 44 L. J. M. C. 140; 32 L. T. 720; 23 W. R. 911; 2 Asp. M. C. 573 ..... 251, 253, 254
"Hagen," (1908) P. 189; 98 L. T. 891; 77 L. J. P. 124; 11 Asp. M. C. 66 285
Haigh *v.* Royal Mail Steam Packet Co., 52 L. J. Q. B. 395, 640; 48 L. T. 267; 49 *ibid.* 802; 5 Asp. M. C. 47, 189 269
Haight *v.* Bird, 26 Fed. Rep. 539 488
"Halfdan," Ship. Gaz., 22nd Feb. 1908 524
Hall *v.* Cardiff Pilotage Board, C. P. D. 18th Nov. 1879 248
—— *v.* Hill. Seld. Ser. Admiralty, II. lxxxiv. 138
"Hallett," Ad. Div. 9th Aug. 1887 473
"Halley," L. R. 2 A. & E. 3; 17 L. T. 329; 37 L. J. Ad. 1; 16 W. R. 284; on app. 5 Moo. P. C. N. S. 262; L. R. 2 P. C. 193; 37 L. J. Ad. 33; 18 L. T. 879; 16 W. R. 998 ..... 72, 81, 101, 201, 204, 207, 216, 217, 226, 246
Halliday *v.* Harris, L. R. 9 C. P. 668; 43 L. J. C. P. 350; 30 L. T. 680; 22 W. R. 756 79
Hamburg Americanishe Packetfahrt Actien Gesellschaft *v.* Burrell. See "Franconia."
"Hamilton," 95 Fed. Rep. 844 102
Hamilton *v.* Baker. See "Sara."
Hammond *v.* Rogers. See "Christiana."
Hancock *v.* York, Newcastle, and Berwick Railway Co., 10 C. B. 348 .. 88
"Hand of Providence," Swab. 107 ..... 331, 440, 442
Handaysyde *v.* Wilson, 3 Car. & P. 528 ..... 314, 456
"Hankow," 4 P. D. 197; 48 L. J. Ad. 29; 40 L. T. 335; 28 W. R. 156; 4 Asp. M. C. 97 ..... 243, 257, 308
"Hanna," L. R. 1 A. & E. 283; 36 L. J. Ad. 1; 15 L. T. 334; 15 W. R. 263 ..... 243, 244, 256, 257
"Hannah Park" and "Lena," 14 L. T. 675 105
"Hannibal" and "Queen," L. R. 2 A. & E. 53; 37 L. J. Ad. 12 ..... 57, 58, 59
"Hansa," 58 L. T. 530; 6 Asp. M. C. 268 107
———— 5 Bened. 501 ..... 377, 381
"Hare," (1904) P. 331; 90 L. T. 323; 73 L. J. P. 47; 9 Asp. M. C. 547 ..... 317, 379, 523
Harmer *v.* Bell. See "Bold Buccleugh."
Harmond *v.* Pearson, 1 Camp. 515 88
"Harmonides," (1903) P. 1 102
Harmony, &c. *v.* United States. See "Malek Adhel."
"Harold," 84 Fed. Rep. 698 ..... 126, 182, 371, 376
"Harrington," 13 P. D. 48; 57 L. J. Ad. 45; 59 L. T. 72; 6 Asp. M. C. 282 ..... 163, 284
Harris *v.* Anderson, 14 C. B. N. S. 499 ..... 29, 196
—— *v.* Hamburg, &c. Gesellschaft, Owners of "Franconia," 2 C. P. D. 173; 46 L. J. C. P. 363 ..... 201, 285
—— *v.* Mobbs, 3 Ex. D. 268; 39 L. T. 164 31
—— *v.* Quine, L. R. 4 Q. B. 653; 10 B. & S. 641; 38 L. J. Q. B. 331; 20 L. T. 947; 17 W. R. 967 212
—— *v.* Willis, 15 C. B. 710; 24 L. J. C. P. 93 289

PAGE

"Harrisburg," 71 Fed. Rep. 894 416
——— 119 U. S. Rep. 199 211
"Harry," 15 Fed. Rep. 161 494
"Harton," 9 P. D. 44; 53 L. J. Ad. 25; 50 L. T. 370; 32 W. R. 597; 5 Asp. M. C. 213 ..... 55, 377, 429
"Harvest," 11 P. D. 14, 90; 55 L. J. Ad. 35; 54 L. T. 274; 55 *ibid.* 202; 34 W. R. 491; 5 Asp. M. C. 546; 6 *ibid.* 5 ..... 504, 545
"Harvest Home," (1905) P. 177; 10 Asp. M. C. 118; 93 L. T. 395; 74 L. J. P. 65 ..... 193, 473
Hastorf *v.* Mayor, &c. of City of New York, 64 Fed. Rep. 869 481
"Haswell," Br. & L. 247 287
"Havana," 54 Fed. Rep. 411 ..... 54, 475
Havelock *v.* Rockwood, 8 T. R. 268 212
"Haversham Grange," (1905) P. 307; 93 L. T. 733; 74 L. J. P. 115; 10 Asp. M. C. 156 111
"Haverton," 31 Fed. Rep. 563 ..... 336, 352, 391
"Havilah," 50 Fed. Rep. 331 107
Hawkins *v.* Morgan, 49 L. J. Q. B. 618 301
"Hawthornbank," (1904) P. 129; 90 L. T. 293; 73 L. J. P. 18; 9 Asp. M. C. 535 ..... 346, 347
Hay *v.* Le Neve, 2 Shaw's Scotch Appeal Cas. 395 ..... 16, 17, 31, 117, 123, 143, 145
Hayn *v.* Culliford, 4 C. P. D. 182; 48 L. J. C. P. 372; 40 L. T. 536; 27 W. R. 541; 4 Asp. M. C. 48, 128 ..... 130, 265
Heard *v.* Holman, 19 C. B. N. S. 1 109
"Hector," 8 P. D. 218; 52 L. J. Ad. 47 (costs); *ibid.* 51 (limitation); 48 L. T. 890; 31 W. R. 881; 5 Asp. M. C. 101—C. A. 24, 60, 86, 116, 129, 216, 222, 227, 294, 305, 310, 311
Hedges *v.* London and St. Katherine Dock Co., 16 Q. B. D. 597; 55 L. J. M. C. 46; 54 L. T. 427; 34 W. R. 503; 5 Asp. M. C. 539 304
Hedley *v.* Pinkey & Sons SS. Co., (1894) App. Cas. 222; 63 L. J. Q. B. 419; 70 L. T. 630; 42 W. R. 497; 7 Asp. M. C. 483 99
"Hedwig," 1 Sp. 19 289
"Heinrich Bjorn," 11 App. Cas. 270; 54 L. J. Ad. 80; 55 L. T. 66; 33 W. R. 719; 6 Asp. M. C. 1 ..... 73, 76, 80
"Helen Cooper" and "R. L. Mabey," 7 Blatchf. 378 477
"Helen Keller," 50 Fed. Rep. 142 ..... 439, 479
"Helenslea," 7 P. D. 57; 51 L. J. Ad. 16; 47 L. T. 446; 30 W. R. 616; 4 Asp. M. C. 594 ..... 285, 294
"Helvetia," 3 Asp. M. C. 43, n. 404
Henderson *v.* Henderson, 3 Ha. 100 212
"Henri IV.," 13 Quebec L. R. 379 ..... 30, 107
"Henry Coxon," 3 P. D. 156; 47 L. J. Ad. 83; 38 L. T. 819 289
"Henry M. Clark," 22 Fed. Rep. 752 101
"Henry Morton," 31 L. T. 859; 2 Asp. M. C. 466 ..... 436, 490, 502, 545
"Herald," 63 L. T. 324; 6 Asp. M. C. 542 312
"Hercules" (division of loss), 20 Fed. Rep. 205 131
——— 51 Fed. Rep. 452 456
"Hermod," 62 L. T. 670; 6 Asp. M. C. 509 ..... 45, 342
Hibbs *v.* Ross, 5 B. & S. 655; L. R. 1 Q. B. 534; 35 L. J. Q. B. 193; 12 Jur. N. S. 812; 15 L. T. 67; 14 W. R. 914 64

PAGE
"Hibernia" (pilot; costs; presumption), 31 L. T. 805; 24 W. R. 60; 2 Asp. M. C. 454—P. C. 41, 43, 307, 474
——— ——— (pilot; inevitable accident), 4 Jur. N. S. 1244 ..... 8, 27, 235
"Hibernian," Redpath *v.* Allen, 9 Moo. P. C. N. S. 340; L. R. 4 P. C. 511; 42 L. J. Ad. 8; 27 L. T. 725; 21 W. R. 276; 1 Asp. M. C. 491 ..... 215, 217, 219
Highfield *v.* Peake, M. & M. 109 290
"Highgate," 62 L. T. 841; 6 Asp. M. C. 512 ..... 6, 408, 411, 413, 458
Hill *v.* Audus, 1 K. & J. 263; 24 L. J. Ch. 229; 3 W. R. 230 300
"Hirondelle," Ship. Gaz., Dec. 15th 1905 363
"Hjemmett," 5 P. D. 227; 49 L. J. Ad. 66; 42 L. T. 514; 4 Asp. M. C. 274 ..... 188, 283
Hobbs *v.* London & South Western Rail. Co., L. R. 10 Q. B. 111; 44 L. J. Q. B. 49; 32 L. T. 252; 23 W. R. 520 115
"Hochung" and "Lapwing," 7 App. Cas. 512; 51 L. J. P. C. 92; 47 L. T. 485; 31 W. R. 303; 5 Asp. M. C. 39 ..... 41, 43, 59, 61, 132, 287
Hodgkinson *v.* Fernie, 2 C. B. N. S. 415; 26 L. J. C. P. 217; 3 Jur. N. S. 818 67
Hoffman *v.* Union Ferry of Brooklyn, 68 New York (Sicker's) Rep. 385; 7 Amer. Rep. 435 ..... 110, 384
"Holar," (1901) P. 7; 69 L. J. Ad. 140; 83 L. T. 436; 9 Asp. M. C. 143 259
Hole *v.* Sittingbourne Rail. Co., 6 H. & N. 488; 30 L. J. Ex. 81; 3 L. T. 750; 9 W. R. 274 68
"Hollandia" and "John Ormston" (not reported) 340
Holman *v.* Irvine Harbour Trustees, 4 Sess. Cas. 4th Ser. 406 .. 94, 215, 239
Homer Ramsdell Co. *v.* Compagnie Générale Transatlantique, 182 U. S. Rep. 406 241
"Hope" (port helm), 1 W. Rob. 154 ..... 228, 296, 314
——— (warping), 2 W. Rob. 8 491
"Hopewell" and "Prosperous," Rennen *v.* Humble 128, 139
Hopton *v.* a pink, Seld. Ser. Adm. H. 79 72
"Hornet," (1892) P. 361; 68 L. T. 236; 7 Asp. M. C. 262 .. 14, 107, 124, 474, 476
Hossack *v.* Gray, 6 B. & S. 598; 34 L. J. M. C. 209; 12 L. T. 701; 13 W. R. 859; 11 Jur. N. S. 996 ..... 254, 262
Houstoun *v.* Marquis of Sligo, 29 Ch. D. 448; 52 L. T. 96 212
"Howard," 30 Fed. Rep. 280 108
"Howard B. Peck," 48 Fed. Rep. 334 ..... 365, 481
"Howard Carroll," 41 Fed. Rep. 159 ..... 168, 407
Howard, Smith & Co. *v.* Wilson, (1896) App. Cas. 579; 65 L. J. P. C. 66; 75 L. T. 81; 8 Asp. M. C. 197—P. C. 91, 108
"Hubbuck," Ad. Div. 28th June, 1887 ..... 359, 430
"Hudson," 5 Bened. 206 ..... 385, 484
——— 15 Fed. Rep. 162 ..... 95, 193, 197
"Hudson City," 38 Fed. Rep. 446 485
Huggett *v.* Montgomery, 2 Bos. & P. N. R. 446 2
Hughes *v.* Percival, 8 App. Cas. 443; 52 L. J. Q. B. 719; 49 L. T. 189; 31 W. R. 725 68

PAGE

Hughes *v.* Sutherland, 7 Q. B. D. 160; 50 L. J. Q. B. 567; 45 L. T. 287; 29 W. R. 867; 4 Asp. M. C. 459 157
Hull *v.* Cook (not reported) 199
Humboldt Lumber Manufacturers' Association, In re, 60 Fed. Rep. 428.. 189
Hunter *v.* M'Gown, 1 Bligh, 573 150
"Huntress," 2 Sprague, 61 5
Hutton *v.* Stoker, "Friends Goodwill" and "Peggy" 141
Hyman *v.* Helm, 24 Ch. D. 531; 49 L. T. 376; 32 W. R. 258..... 211

I.

"I. M. North, 37 Fed. Rep. 270 109
"Iberia," 40 Fed. Rep. 893 495
"Ice King," 52 Fed. Rep. 894 60
"Ida" (liability; appearance), Lush. 6; 1 L. T. 417.....28, 65, 211
——— and "Mary Ida" (not reported) 337
——— and "Wasa," 15 L. T. 103; 2 Mar. Law Cas. O. S. 414 ..... 456, 457, 486
"Illinois," 13 Otto, 298 413
"Ilos," Swab. 100 97
"Imbro," 14 P. D. 73; 58 L. J. Ad. 49; 60 L. T. 936; 37 W. R. 559; 6 Asp. M. C. 392.....43, 359, 360, 401
"Immacolata Concezione," 8 P. D. 34; 47 L. T. 388; 31 W. R. 642; 4 Asp. M. C. 593 295
"Immaganda Sara Clasina," 7 Not. of Cas. 582; on app. 8 Moo. P. C. 75 .....314, 412
"Imperial," 38 Fed. Rep. 614 182
Ince *v.* East Boston Ferry Co., 106 Mars. Rep. 149 475
"Independence." See "Arthur Gordon."
"India," Ad. Div. 7th Dec. 1886 188
India, Secretary of State for *v.* Hewitt. See Secretary of State for India, &c.
"Indian" and "Jessie," 12 L. T. 586; 2 Mar. Law Cas. O. S. 217 .. 479
"Indian Chief," 14 P. D. 24; 58 L. J. Ad. 25; 60 L. T. 240; 6 Asp. M. C. 362 .....340, 362, 479, 491, 537
"Indus," 12 P. D. 46; 56 L. J. Ad. 88; 56 L. T. 376; 35 W. R. 490; 6 Asp. M. C. 105—C. A. 9, 30, 31, 224, 225, 233
"Industrie," L. R. 3 A. & E. 303; 40 L. J. Ad. 26; 24 L. T. 446; 19 W. R. 728; 1 Asp. M. C. 17 .....27, 335, 361
——— 27 Fed. Rep. 767.....33, 496
"Inflexible" (risk of collision), Swab. 32 .....324, 327, 397
"Inflexible, H.M.S." (damages), Swab. 200; 5 W. R. 517 ..101, 110, 111
Inman *v.* Reck. See "City of Antwerp."
"Innisfail" and "Secret," 35 L. T. 819; 3 Asp. M. C. 337 .....308, 479
"Insulano" and "City of Mecca" (not reported)..... 320
"Inventor," 10 Asp. M. C. 99 286
"Invincible," 2 Gall. 29..... 199
"Iona," 4 Moo. P. C. N. S. 336; L. R. 1 P. C. 426; 16 L. T. 158..224, 232

PAGE
"Iron Duke," 4 Not. of Cas. 585; aff. 2 W. Rob. 377 334
"Ironmaster" (pleading), 6 Jur. N. S. 782 288
——————(damages), Swab. 441 .....101, 102
"Irrawaddy," Ad. Div. 15th June, 1887 377
"Isca," 12 P. D. 34; 56 L. J. Ad. 47; 55 L. T. 779; 35 W. R. 382; 6 Asp. M. C. 63 .....187, 194
"Islander," 152 Fed. Rep. 385 442
"Isle of Cyprus," 15 P. D. 134; 59 L. J. Ad. 90; 63 L. T. 352; 38 W. R. 719; 6 Asp. M. C. 534 291
"Isle of Pines," 24 Fed. Rep. 498 168
"Itinerant," 2 W. Rob. 236 .....306, 381
"Ivanhoe" and "Martha M. Heath," 7 Bened. 213 .....167, 445

J.

"J. D. Peters," 42 Fed. Rep. 269 34
"J. D. Henkes," 12 P. D. 106; 56 L. J. Ad. 69; 56 L. T. 581; 35 W. R. 412; 6 Asp. M. C. 121 309
"J. H. Rutter," 35 Fed. Rep. 365 .....25, 369
"J. R. Hinde," (1892) P. 231; 61 L. J. Ad. 91; 67 L. J. 832; 7 Asp. M. C. 257 533
"J. R. P. Moore," 45 Fed. Rep. 267 33
"J. T. Easton," 24 Fed. Rep. 95 101
"J. W. Paxon," 24 Fed. Rep. 302 189
"Jack Jewett," 23 Fed. Rep. 927 186
"Jackson," 58 Fed. Rep. 607 15
Jackson *v.* Kruger, 54 L. J. Q. B. 446; 52 L. T. 962 98
"Jacob," 1 Pritch. Ad. Dig. 3rd ed. 286; 5 Ir. Jur. N. S. 379 238
"Jacob Brandow," 39 Fed. Rep. 831 190
"Jacob Christensen," (1895) P. 281; 64 L. J. Adm. 92; 72 L. T. 902; 8 Asp. M. C. 21 298
"Jacob Landstrom," 4 P. D. 191; 40 L. T. 38; 27 W. R. Dig. 205; 4 Asp. M. C. 58 294
"James," 10 Moo. P. C. 162; Swab. 60; 4 W. R. 353 (reversing Swab. 55) 340, 348, 390, 471
James *v.* London and South Western Rail. Co., L. R. 7 Ex. 187; 41 L. J. Ex. 82; 26 L. T. 187; 20 W. R. 538; on app. L. R. 7 Ex. 287; 41 L. J. Ex. 186; 27 L. T. 382; 21 W. R. 25; 1 Asp. M. C. 226—P. C. 299, 300
"James Berwind," 44 Fed. Rep. 693 185
"James Gray" and "John Fraser"; Cushing *v.* The Owners of "John Fraser," 21 How. 184 .....125, 182, 192, 193
"James T. Easton," 27 Fed. Rep. 464 .....30, 392
"James Watt," 2 W. Rob. 270 .....1, 5, 327, 419
"James Westoll," (1905) P. 47; 92 L. T. 150; 74 L. J. P. 9; 10 Asp. M. C. 29 295
Jamieson *v.* Drinkald, 5 L. J. C. P. O. S. 30 314

PAGE

"Jane Bacon," 27 W. R. 35; 6 W. R. 329 ....189, 190, 191, 335, 456, 473
"Janet Wilson," Swab. 261 81
"Jassy," (1906) P. 270; 95 L. T. 363; 75 L. J. P. 93; 10 Asp. M. C. 278 209
"Java," 14 Wall. 189 .....11, 490
"Jay Gould," 19 Fed. Rep. 765 46
"Jennie S. Barker," L. R. 4 A. & E. 456; 44 L. J. Ad. 20; 33 L. T. 318; 3 Asp. M. C. 42 .....333, 340, 404
"Jeremiah" and "Providence," Mason *v.* Johnson, Marsd. Ad. Ca. 282 139
Jermin *v.* Shadfurth, Seld. Ser. Admiralty, II. lxxxiv. 139
"Jesmond," and "Earl of Elgin," 8 Moo. P. C. N. S. 179; L. R. 4 P. C. 1; 25 L. T. 514; 1 Asp. M. C. 150.....4, 325, 327, 328, 398, 399, 422, 429, 471
"Jesse Spaulding," 50 Fed. Rep. 583.....23, 439
"Jesse W. Knight," 45 Fed. Rep. 590 60
Jocelyn *v.* Wickett, Seld. Ser. Admiralty, II. lxxxiv. 138
"Johann Friedrich," 1 W. Rob. 35 .....199, 202
"Johann Sverdrup," 12 P. D. 43; 56 L. J. Ad. 256; 56 L. T. 256; 35 W. R. 300; 6 Asp. M. C. 16, 73—C. A. 259
Johanssen *v.* Elvina, 4 Fed. Rep. 573.....27, 107, 113
"John A. Berkman," 6 Fed. Rep. 535 91
"John A. Carnie," 49 Fed. Rep. 682 186
"John and Mary," Swab. 471.....79, 293, 296
"John Bellamy," L. R. 3 A. & E. 129; 39 L. J. Ad. 28; 22 L. T. 244; 3 Mar. Law Cas. O. S. 360 .....276, 278
"John Boyne," 36 L. T. 29; 25 W. R. 756; 3 Asp. M. C. 341 286
"John Brotherick," 8 Jur. 276..... 330
"John Buddle," 5 Not. of Cas. 387 .....8, 453
"John Dunn," 1 W. Rob. 159 297
"John Fenwick," L. R. 3 A. & E. 500; 41 L. J. Ad. 38; 26 L. T. 322; 1 Asp. M. C. 249 .....335, 359, 364, 486
"John G. Stevens," 170 U. S. Rep. 113 .....76, 78
"John H. May," 52 Fed. Rep. 882 169
"John Harley" and "William Tell," 13 L. T. 413; 2 Mar. Law Cas. O. S. 290 .....38, 482, 492
"John Hollway," (1900) P. 37; 69 L. J. Ad. 51; 81 L. T. 726; 48 W. R. 416; 9 Asp. M. C. 36..... 542
"John Johansson," 6 Asp. M. C. 39, n. 346
"John King," 49 Fed. Rep. 469 .....325, 420
"John L. Hasbrouck," 3 Otto, 405 448
"John M'Intyre" (limitation), 6 P. D. 200; 50 L. J. Ad. 76 (*nom.* "John Ormston") 156
——————(Art. 18), 9 P. D. 135; 53 L. J. Ad. 115; 51 L. T. 185; 33 W. R. 190; 5 Asp. M. C. 278—C. A. 429
"John O'Scott," (1897) P. 64, 66 L. J. Ad. 47; 76 L. T. 222; 8 Asp. M. C. 235—C. A. 545
"John Ormston." See "John M'Intyre."
"John S. Darcy," 29 Fed. Rep. 644 321
"John S. Smith," 27 Fed. Rep. 398..... 485

PAGE
"John Taylor," 6 Bened. 227 411
"Johnson," 9 Wall. 146 ..... 326, 330
Johnson *v.* Black. See "Two Ellens."
——— *v.* Lindsay, 23 Q. B. D. 508; 58 L. J. Q. B. 581; 38 W. R. 119. 175
——— *v.* "Niagara," 84 Fed. Rep. 902 370
Jolliffe *v.* Wallasey Local Board, L. R. 9 C. P. 62; 43 L. J. C. P. 41; 29 L. T. 582; 2 Asp. M. C. 146 88
Jones *v.* Bennett, 63 L. T. 705; 6 Asp. M. C. 596 249
—— *v.* Boyce, 1 Stark. 493 3
—— *v.* Corporation of Liverpool, 14 Q. B. D. 890; 54 L. J. Q. B. 345; 33 W. R. 551 175
"Jonty Jenks," 54 Fed. Rep. 1021 ..... 126, 185, 190, 193
"Joseph Rickett," Ship. Gaz., March 5th, 1901 541
"Joseph W. Dyer" *v.* The National Steamship Co., 14 Blatchf. 483; 4 Asp. M. C. 26 ..... 114, 146
Joyce *v.* Capel, 8 Car. & Pay. 370 64
"Julia," Lush. 224; 14 Moo. P. C. (*nom.* Bland *v.* Ross) 210 .. 25, 180, 187, 189, 191, 195, 197, 228, 230, 231, 232, 233, 236
"Julia Fisher," 2 P. D. 115; 36 L. T. 257; 25 W. R. 756; 3 Asp. M. C. 380—C. A. 294, 295, 311
"Julia M. Hallock," 1 Sprague, 539 485
"Juliana," Swab. 20 40
"Juliet Erskine," 6 Not. of Cas. 633 ..... 7, 373, 383
"Juniata," 3 Otto, 337 ..... 95, 131, 182, 269
"Juno" (pilotage), 1 P. D. 135; 45 L. J. Ad. 105; 34 L. T. 741; 24 W. R. 902; 3 Asp. M. C. 217 ..... 254, 255, 308
——— (dredging), 71 L. T. 341; 7 Asp. M. C. 506 ..... 340, 491, 537

K.

"Kaikoura," 2 Pr. Ad. Dig. 3rd ed. 1762 113
"Kaiser Wilhelm der Grosse," (1907) P. 259; 97 L. T. 366; 76 L. J. P. 138; 10 Asp. M. C. 504 ..... 441, 442, 443
"Kalamazoo," 15 Jur. 885 ..... 80, 81, 297
"Karla," Br. & L. 367 313
"Karo," 13 P. D. 24; 57 L. J. Ad. 8; 58 L. T. 188; 6 Asp. M. C. 245 ..... 130, 300
"Kate," (1899) P. 165; 68 L. J. Ad. 41; 80 L. T. 423; 47 W. R. 669; 8 Asp. M. C. 539 ..... 102, 109, 113
Kearney *v.* London, Brighton & South Coast Rail. Co., L. R. 6 Q. B. 759; 40 L. J. Q. B. 285; 24 L. T. 913; 20 W. R. 24—Ex. Ch. 37
Keddye *v.* De Frances, Seld. Ser. Admiralty, II. lxxxiii. 136
Kemp *v.* Halliday, 6 B. & S. 723; L. R. 1 Q. B. 520; 12 Jur. N. S. 582; 35 L. J. Q. B. 156; 14 L. T. 762; 14 W. R. 697—Ex. Ch. .. 283
Kendrick *v.* Burnett, 25 Ct. of Sess. Cas. 4th Ser. 82 211
"Kennebec," 108 Fed. Rep. 300 ..... 362, 369
Kennedy *v.* "Sarmatian," 2 Fed. Rep. 911 ..... 231, 360, 473, 504
"Kepler," 2 P. D. 40, n. 9, 476, 483

PAGE

Kerr *v.* Screw Collier Co., (1910) A. C. 165 442
"Khedive." See "Voorwaarts" and "Khedive."
Kichener *v.* Cocklin (not reported)..... 140
Kidson *v.* McArthur, 5 Ct. of Sess. Cas. 4th Ser. 936 .....26, 158, 361
"Killarney" (Hull pilotage), Lush. 427; 6 L. T. 908....243, 244, 251, 257
——— ——— (pilotage certificate), Lush. 202; 30 L. J. Ad. 41; 5 L. T. 21 .....215, 246
"Killeena," Ad. Div. Nov. 1891 389
Kinge *v.* Johnson, Seld. Ser. Admiralty, II. lxxxiii..... 136
Kingscote, *Ex parte*. See Tillett, *Re*.
"Kingston by the Sea," 3 W. Rob. 152 .....167, 487
"Kirby Hall," 8 P. D. 71; 52 L. J. Ad. 31; 48 L. T. 797; 31 W. R. 658; 5 Asp. M. C. 90 .....292, 378, 380, 429, 432
"Kirkwall," 100 L. T. 284; 11 Asp. M. C. 173 417
Kitchener *v.* Cocklin. See "Blessing" and "William and John."
"Kjobenhavn," 2 Asp. M. C. 213; 30 L. T. 136 ....25, 336, 447, 477, 484
"Knaresboro," (1908) P. 38, n. 444, 445
"Knarwater," 6 R. 784; 63 L. J. Ad. 65 421
Knight *v.* Faith, 15 Q. B. 649; 19 L. J. Q. B. 509; 14 Jur. 1114 276
Knott *v.* Foulgier, Seld. Ser Admiralty, II. lxxxiv. 138
"Knutsford," (1891) P. 219; 64 L. T. 352; 39 W. R. 559; 7 Asp. M. C. 33 313
"Kolon," 9 Bened. 197 496
"Kong Magnus" (damage lien), (1891) P. 223; 63 L. T. 715; 6 Asp. M. C. 583 .....74, 75, 81, 102
——— ——— (interest), (1891) P. 223; 65 L. T. 231; 7 Asp. M. C. 64 74
Koning Willem I., (1903) P. 114; 88 L. T. 807; 72 L. J. P. 28; 9 Asp. M. C. 425 .....35, 59, 316, 378, 379

L.

"L. C. Waldo," 100 Fed. Rep 502 403
"L. P. Dayton," 13 Dav. 337 .....30, 186
"La Bourgogne," 117 Fed. Rep. 261 211
"La Champagne," 60 Fed. Rep. 299 336
"La Normandie," 58 Fed. Rep. 427 102
"La Plata," Swab. 220; on app. *ibid.* 298 .....168, 331, 492, 500
Lack *v.* Seward, 4 Car. & Pay. 106 472
"Laconia," 7 L. T. 164; on App. 2 Moo. P. C. N. S. 161; 33 L. J. Ad. 11; 12 W. R. 90 .....2, 143
"Lady Ann" (pleading), 7 Not. of Cas. 364 .....287, 288
"Lady Anne" (negligence), 15 Jur. 18; see 7 Not. of Cas. 370 .....393, 457, 471
"Lady Campbell," 2 Hag. Ad. 5..... 120
"Lady Downshire," 4 P. D. 26; 48 L. J. Ad. 41; 39 L. T. 236; 27 W. R. 648; 4 Asp. M. C. 25 .....55, 280
"Lady Pike," 21 Wall. 1 187

PAGE
"Lady Wodehouse," 2 Times L. R. 252 541
Lake Erie Transp. Co. *v.* Gilchrist Transp. Co., 142 Fed. Rep. 89 326
"Lake St. Clair" and "Underwriter," Wilson *v.* Canada Shipping Co., 2 App. Cas. 389; 36 L. T. 155; 3 Asp. M. C. 36; varying 1 Quebec L. R. 323) 5, 305, 388, 392, 393, 413, 487, 488, 489, 496
"Lanarkshire," 1 Sp. 189 211
"Lancashire," L. R. 4 A. & E. 198; 29 L. T. 927; 2 Asp. M. C. 202 .. 380, 384, 484, 492
——— and "Knarwater," (1894) App. Cas. 1; 63 L. J. Ad. 80; 69 L. T. 663; 7 Asp. M. C. 376—H. L. 421
Lancaster Canal Co. *v.* Parnaby. See Parnaby *v.* &c.
"Lapwing." See "Hochung."
Latham *v.* Hamilton and Merriman Co., 63 Fed. Rep. 856 ..... 23, 321, 495
Laugher *v.* Pointer, 5 B. & C. 547 ..... 70, 174
"Laura Lee," 24 Fed. Rep. 483 101
"Laura V. Rose," 28 Fed. Rep. 104 493
"Lauretta," 4 P. D. 25; 48 L. J. Ad. 55; 40 L. T. 444; 27 W. R. 902; 4 Asp. M. C. 118 311
Law *v.* Baker, 26 Fed. Rep. 164 196
Lawe *v.* Lee, Seld. Ser. Admiralty, II. lxxxiv. 138
Lawrence *v.* Jenkins, L. R. 8 Q. B. 274; 42 L. J. Q. B. 147; 28 L. T. 406; 21 W. R. 577 15
Lawson *v.* Dumlin, 9 C. B. 54 62
Leddy *v.* Gibson, 11 Ct. of Sess. Cas. 3rd Ser. 304 99
"Legatus," Swab. 168; 5 W. R. 154 110
——— and "Emily," Holt, 217 461
Leigh *v.* Ireland, Seld. Ser. Admiralty, II. lxxxiii. 136
"Leith," 7 Not. of Cas. 137 440
"Lemington," 2 Asp. M. C. 475; 32 L. T. 69 ..... 60, 71, 83, 84, 179
"Lena," 14 L. T. 675 359
"Leo," Lush. 444; 31 L. J. Ad. 78; 6 L. T. 58 ..... 75, 313
——— 34 Fed. Rep. 140 352
"Leon," 6 P. D. 148; 4 Asp. M. C. 404; 50 L. J. Ad. 59; 44 L. T. 613; 29 W. R. 916; on app. 5 Asp. M. L. C. 25 ..... 87, 146, 202
Leonard *v.* Whitwell, 19 Fed. Rep. 547 110
"Leonidas," Stuart's Vice-Ad. Rep. Lower Canada (Lond. 1858), 226 .. 488
"Lepanto," 50 Fed. Rep. 234 364
——— (sound in fog), 21 Fed. Rep. 651 ..... 36, 377
"Leverington," 11 P. D. 117; 55 L. J. Ad. 78; 55 L. T. 386; 6 Asp. M. C. 7—C. A. 317, 401, 403, 410, 441, 443
Leycester *v.* Logan, 4 K. & J. 725; 6 W. R. 849; and see 3 K. & J. 446; 26 L. J. Ch. 306; 5 W. R. 334 ..... 151, 166
"Libra," 6 P. D. 139; 4 Asp. M. C. 439; 45 L. T. 161 .. 320, 428, 541, 542
Lidgett *v.* Secretan, L. R. 5 C. P. 190; 39 L. J. C. P. 196; 22 L. T. 272; 18 W. R. 692 276
"Lidskjalf," Swab. 117 479
"Ligo," 2 Hagg. Ad. 356 29
Lilley *v.* Doubleday, 7 Q. B. D. 510; 44 L. T. 814; 51 L. J. Q. B. 310 115
"Lima," 4 Jur N. S. 147 124

PAGE

"Lime Rock," 55 Fed. Rep. 126 492
"Limerick," 1 P. D. 292; 34 L. T. 708; 3 Asp. M. C. 206—C. A..... 303
Limpus *v.* London General Omnibus Co., 1 H. & C. 526; 32 L. J. Ex. 34; 9 Jur. N. S. 333; 7 L. T. 641; 11 W. R. 149 .....65, 66
"Linda," Swab. 306; 4 Jur. N. S. 146; 6 W. R. 196 .....104—106, 110
"Linda Flor," Swab. 309; 4 Jur. N. S. 172; 6 W. R. 197 78
"Lindisfarne," (1908) Fo. 604 310
"Lindsay," Ir. Rep. Ad. 1 Eq. 259 106
"Lion," L. R. 2 A. & E. 102; 37 L. J. Ad. 39; 18 L. T. 803; 17 W. R. 577; on app. L. R. 2 P. C. 525; 6 Moo. P. C. N. S. 163; 38 L. J. Ad. 51; 21 L. T. 41; 17 W. R. 993 .....216, 243, 257
Little *v.* Burns, "Owl" and "Ariadne," 9 Ct. of Sess. Cas. 4th Ser. 118..... 318, 323, 376, 398, 399, 421
"Little Lizzie," L. R. 3 A. & E. 56; 23 L. T. 84; 18 W. R. 960 289
Liver Alkali Co. *v.* Johnson, L. R. 9 Ex. 338; 43 L. J. Ex. 216; 31 L. T. 95; 2 Asp. M. C. 332—Ex. Ch. 265
"Livia," 25 L. T. 887; 1 Asp. M. C. 204.....25, 228
"Livingstone," Swab. 519..... 349
"Ljudica," 23 L. T. 474 289
Lloyd *v.* General Iron Screw Collier Co., 3 H. & C. 284; 33 L. J. Ex. 269; 10 Jur. N. S. 661; 10 L. T. 586; 12 W. R. 882 .....266, 268
——— *v.* Guibert, 6 B. & S. 100; L. R. 1 Q. B. 115; 33 L. J. Q. B. 241; 35 L. J. Q. B. 74; 13 L. T. 602—Ex. Ch. 146
"Lloyds." See "Sea Queen."
"Lochlibo," 3 W. Rob. 310; 14 Jur. 1074; on app. *nom.* Pollock *v.* M'Alpin, 7 Moo. P. C. 427 .....7, 229, 230, 231, 233, 234, 236, 237, 384
"Locksley Hall," Ad. Div. 28th March, 1887 232
Lockyer *v.* Offley, 1 T. R. 252 276
Lohre *v.* Aitchison, 3 Q. B. D. 558; 46 L. J. Q. B. D. 715; 36 L. T. 794; 26 W. R. 42; on app. 4 App. Cas. 755; 49 L. J. Ad. 123; 41 L. T. 323; 28 W. R. 1; 4 Asp. M. C. 168—H. L. 101
"London," Morgan *v.* Sim. See "City of London."
——————— (port tack), 6 Not. of Cas. 29 .....30, 390
——————— (fog signals), (1904) P. 355; 91 L. T. 327; 73 L. J. P. 125; 10 Asp. M. C. 12 358
——————— (costs), (1905) P. 152; 93 L. T. 393; 74 L. J. P. 71; 10 Asp. M. C. 109 310
——————— (inevitable accident), Br. & L. 82; 9 Jur. N. S. 1330; 9 L. T. 348; 1 Mar. Law Cas. O. S. 398 .....9, 306
London and South Western Rail. Co. *v.* James, L. R. 8 Ch. 241; 42 L. J. Ch. 337; 28 L. T. 48; 21 W. R. 151; 1 Asp. M. C. 526 ..151, 160
"London Merchant," Marsd. Ad. Cas. 339 144
London School Board *v.* Lardner, "Times," 20th Feb. 1884 .....280, 395
London Steamship Owners' Insurance Co. *v.* Grampian Steamship Co., 24 Q. B. D. 663; 59 L. J. Q. B. 549; 62 L. T. 784; 38 W. R. 651; 6 Asp. M. C. 506—C. A. 129, 275
London, Tilbury and Southend Rail. Co., *In re*, and Trustees of Gower's Walk Schools, 24 Q. B. D. 326; 62 L. T. 306; 59 L. J. Q. B. 162; 38 W. R. 343..... 15
"Londonderry," 4 Not. of Cas. Suppl. xxxi..... 334

PAGE
"Longford," 14 P. D. 34; 58 L. J. Ad. 33; 60 L. T. 373; 37 W. R. 372; 6 Asp. M. C. 371—C. A. 71, 82, 296
"Longnewton," 59 L. T. 260; 6 Asp. M. C. 302 ..... 409, 510
Longridge *v.* Dorville, 5 B. & Ald. 117 217
"Lord Bangor," (1896) P. 28; 65 L. J. Ad. 6; 73 L. T. 414; 8 Asp. M. C. 217 ..... 167, 378, 421
"Lord Byron," cited Maude & Pollock, 4th ed. 607 ..... 210, 366
"Lord Hobart," 2 Dods. 100 94
"Lord Melville" (not reported) 116
"Lord O'Neill," 66 Fed. Rep. 77 17
"Lord of the Isles," cited 2 Hag. 402 200
"Lord Saumarez," 6 Not. of Cas. 600 ..... 18, 373
"Lord Seaton," 2 W. Rob. 391; 4 Not. of Cas. 164 ..... 289, 290
"Lord Strathnairn" (not reported) 294
Lords Bailiff Jurats of Romney Marsh *v.* Corporation of the Trinity House, L. R. 5 Ex. 204; 39 L. J. Ex. 163; 18 W. R. 869; on app. L. R. 7 Ex. 247; 41 L. J. Ex. 106; 22 L. T. 446; 20 W. R. 952 ..25, 26
"Lorenzo D. Baker," 24 Fed. Rep. 814 376
"Lorne," 2 Stuart, V. Ad. (Canada) 177 336
"Lotty," Olcott, Ad. 329 220
"Louisa," 6 Not. of Cas. 531; 3 W. Rob. 99 81
"Louisburg," 75 Fed. Rep. 424 44
"Louisiana," 3 Wall. 164 482
"Love Bird," 6 P. D. 80; 44 L. T. 650; 4 Asp. M. C. 427 ....44, 59, 305, 331, 336, 370, 429
"Loyal" and "Challenger," 14 Quebec L. R. 135 ..... 189, 194
Lucey *v.* Ingram, 6 M. & W. 302; 9 L. J. Ex. 196 ..... 217, 246
"Lucia Jantina" and "Mexican," Holt, 130 ..... 58, 462
"Lucille," 15 Wall. 676 ..... 3, 406
"Luckenback," 15 Fed. Rep. 924 190
"Lucy," 74 Fed. Rep. 572 432
Ludwig *v.* Holberg, 36 Fed. Rep. 914 369
"Luray," 24 Fed. Rep. 751 377
Luxford *v.* Large, 5 Car. & Pay. 421 ..... 27, 498
"Luzerne," 157 Fed. Rep. 391 3
"Lydia," 11 Blatchf. 415 385
Lyon *v.* Mells, 5 East, 428; 1 Smith, 478 265

M.

"M. J. McCaldin," 35 Fed. Rep. 330 472
"M. M. Caleb," 10 Blatchf. 467 ..... 9, 25
"M. Moxham," 1 P. D. 43; 45 L. J. Ad. 36; 33 L. T. 463; 24 W. R. 283; on app. 1 P. D. 107; 46 L. J. Ad. 17; 34 L. T. 559; 24 W. R. 650; 3 Asp. M. C. 191 ..... 72, 81, 204
"Mac," 7 P. D. 38; 46 L. T. 206; 51 L. J. Ad. 20; 30 W. R. 552; on app. 7 P. D. 126; 51 L. J. Ad. 81; 46 L. T. 907; 4 Asp. M. C. 555 304

PAGE
"McCallum" and "Odette," 7 Duval, Canada, 36 124
McCowan *v.* Baine. See "Niobe."
McDowall *v.* Great Western Rail. Co., (1902) 1 K. B. 618 15
McFarland *v.* Selby Smelting and Lead Co., 17 Fed. Rep. 253 473
McHenry *v.* Lewis, 22 Ch. D. 397; 52 L. J. Ch. 325; 47 L. T. 549; 31 W. R. 305 211
McIntosh *v.* Slade, 6 B. & C. 657; 9 D. & R. 738; 5 L. J. (O. S.) K. B. 345 245
Maclaren *v.* Compagnie Française de Navigation à Vapeur, 9 App. Cas. 640. See "Thames" and "Lutetia."
"McLeod," 5 P. D. 251; 50 L. J. Adm. 6 120
MacMahon *v.* Field, 7 Q. B. D. 591; 50 L. J. Q. B. 311, 552; 44 L. T. 175; 45 L. T. 381 115
MacManus *v.* Crickett, 1 East, 106 ..... 63, 65
McNeal, *Ex parte*, 13 Wall. 236 241
"Macander" and "Florence Nightingale," 1 Moo. P. C. N. S. 63; Br. & Lush. 29; 9 Jur. N. S. 475; 8 L. T. 34; 11 W. R. 542 ..... 440, 442
"Magdeburgh" and "Henry Willard," Ad. Div. Jan. 16, 1885 .... 59, 206
"Maggie Armstrong" and "Blue Bell," 14 L. T. 340; 2 Mar. Law Cas. O. S. 318 ..... 479, 481
"Maggie J. Smith," 16 Davis, 349 ..... 395, 452
"Maggie S. Hart," 38 Fed. Rep. 765 185
"Magna Charta," 25 L. T. 512; 1 Asp. M. C. 153 ..... 292, 293, 376
"Magnet," and "Duke of Sutherland," L. R. 4 A. & E. 417; 44 L. J. Ad. 1; 32 L. T. 129; 2 Asp. M. C. 478 ..... 59, 291, 341, 342, 343
"Magneta," 15 P. D. 101; 59 L. J. Ad. 55; 63 L. T. 114; 6 Asp. M. C. 531 522
"Maid of Auckland," 6 Not. of Cas. 240 ..... 2, 143
"Maid of Kent," 6 P. D. 178; 50 L. J. Ad. 71; 29 W. R. 897; 45 L. T. 718; 4 Asp. M. C. 476 ..... 104, 302
"Main," 11 P. D. 132; 55 L. J. Ad. 70; 55 L. T. 15; 34 W. R. 678; 6 Asp. M. C. 37—C. A. 43, 359, 360, 401, 435, 436
"Majestic," 48 Fed. Rep. 730 498
Majoribanks *v.* Boyd, "Times," 11th Dec 1823 ..... 27, 113
"Malek Adhel," Harmony, &c. Owners *v.* United States, 2 How. 210.. 86
"Mali Ivo," L. R. 2 A. & E. 356; 38 L. J. Ad. 34; 20 L. T. 681 .200, 211
"Maling," 110 Fed. Rep. 227 ..... 126, 131, 470
Malster *v.* Humphreys, 3 Fed. Rep. 535 500
"Malvina," Lush. 493; 31 L. J. Ad. 112; 6 L. T. 369; on app. Br. & Lush. 57; nom. Malcomson *v.* Meeson, 1 Moo. P. C. N. S. 357; 9 Jur. N. S. 527; 8 L. T. 403; 11 W. R. 576 ..... 303, 440
"Manchester," 1 W. Rob. 62 290
"Mangerton," Swab. 120; 2 Jur. N. S. 620 ..... 289, 324
"Manhasset," 34 Fed. Rep. 408 337
"Manitoba," 15 Davis, U. S. 97 ..... 128, 428, 431, 474
"Mannheim," (1897) P. 13; 66 L. J. Ad. 6; 75 L. T. 424; 8 Asp. M. C. 210 211
Manzoni *v.* Douglas, 6 Q. B. D. 145; 50 L. J. Q. B. 289; 29 W. R. 425 37
"Marathon," 48 L. J. Ad. 17; 40 L. T. 163 ..... 97, 224

PAGE
"Marcia Tribou," 2 Sprague, 17 ..... 31, 472, 477
"Maréchal Suchet," (1896) P. 233; 66 L. J. Ad. 94; 74 L. T. 789; 45 W. R. 141; 8 Asp. M. C. 158 286
"Margaret" and "Clan Sinclair" (Thames Rules), *nom.* Cayzer *v.* Carron Co., 9 App. Cas. 873; 54 L. J. Ad. 18; 52 L. T. 361; 33 W. R. 281; 5 Asp. M. C. 204 ..16, 17, 18, 21, 22, 29, 123, 124, 320, 474, 490, 501, 541, 542
——————— (damage), 6 P. D. 76; 50 L. J. Ad. 33; 42 L. T. 663; 4 Asp. M. C. 276; on app. 6 P. D. 76; 50 L. J. Ad. 67; 44 L. T. 291; 29 W. R. 533; 4 Asp. M. C. 375 ..... 1, 13, 14, 22, 108, 533
——————— 4 Otto, 494 187
——————— and "Tuscar," 15 L. T. 86 ..... 349, 489
"Margaret J. Sanford," 30 Fed. Rep. 714; on app. 37 Fed. Rep. 148 ..... 33, 483
Margetts and Ocean Accident and Guarantee Corporation, In re, (1901) 2 K. B. 792; 70 L. J. K. B. 762; 49 W. R. 669 274
"Maria" (pilot), L. R. 1 A. & E. 358; 16 L. T. 717; 15 W. R. 1113 ..... 223, 252
——— (pilot), 1 W. Rob. 95 ..... 82, 206, 214, 215, 216, 230, 235, 243, 245, 259
"Maria des Dores," Br. & L. 27; 32 L. J. Ad. 163; 7 L. T. 838; 11 W. R. 500 290
"Maria Martin," 12 Wall. 31 ..... 17, 190
"Mariel," 32 Fed. Rep. 103 493
"Marion," 56 Fed. Rep. 271 ..... 19, 360
"Marion W. Page," 36 Fed. Rep. 329 168
"Mariska," 107 Fed. Rep. 989 95
"Mark Eveline," 16 Wall. 348 395
"Markland," L. R. 3 A. & E. 340; 24 L. T. 596; 1 Asp. M. C. 261 .. 78
"Marmion," 27 L. T. 255; 1 Asp. M. C. 412 ..... 388, 414
——————— Mitch. Mar. Reg., 1st June, 1877 244
"Marpesia," 8 Moo. P. C. N. S. 468; L. R. 4 P. C. 212; 26 L. T. 333; 1 Asp. M. C. 261 ..... 4, 7, 10, 29, 144, 145, 287, 306, 310, 471
"Marpessa," (1891) P. 403; 61 L. J. Ad. 9; 66 L. T. 356; 40 W. R. 239; 7 Asp. M. C. 155 ..... 105, 113
——————— (1907) A. C. 241; 97 L. T. 1; 76 L. J. P. 128; 10 Asp. M. C. 232 112
Marshall *v.* "Conroy," 2 Fed. Rep. 785 337
——— *v.* Moran. See "Ocean Wave."
Marsingill *v.* Taylor, "Adventure" and "Supply" 140
"Martello," 46 Davis, 64 ..... 36, 44, 429
——————— (speed), 39 Fed. Rep. 505 382
Martin *v.* Crompe, 1 Ld. Raym. 340 98
——— *v.* Green, 1 Keb. 730; Seld. Ser. Adm. II. lxxxiv. 138, 199
——— *v.* Martin & Co., (1897) 1 Q. B. 429 294
——— *v.* Temperley, 4 Q. B. 298; 12 L. J. Q. B. 129; 7 Jur. 150 219
"Mary" and "Rowland," Murton, Wreck Enquiries 473
——— (costs), 7 P. D. 201; 48 L. T. 28; 31 W. R. 248; 5 Asp. M. C. 33 ..... 309, 310

PAGE

"Mary" (pilot), 5 P. D. 14; 48 L. J. Ad. 66; 41 L. T. 351; 28 W. R. 95; 4 Asp. M. C. 183 ..... 170, 172, 178, 227
"Mary *or* Alexandra," L. R. 1 A. & E. 335; 16 L. T. 98; 2 Mar. Law Cas. O. S. 477 311
"Mary Ann," L. R. 1 A. & E. 8; 12 Jur. N. S. 31; 35 L. J. Ad. 6; 13 L. T. 384; 14 W. R. 136 ..... 81, 147
———— 11 Fed. Rep. 336 ..... 409, 415
"Mary Augusta," 55 Fed. Rep. 343 3
"Mary C. Elphicke," 115 Fed. Rep. 375 398
"Mary Fraser," 26 Fed. Rep. 872 481
"Mary Hounsell," 4 P. D. 204; 48 L. J. Ad. 54; 40 L. T. 368; 28 W. R. 140; 4 Asp. M. C. 101 ..... 5, 54, 171, 190, 336, 343, 352
"Mary Ida," 20 Fed. Rep. 741 131
"Mary L. Cushing," 60 Fed. Rep. 110 9
"Mary Lohden," 58 L. T. 461; 6 Asp. M. C. 262 ..... 441, 529
"Mary Powell," 36 Fed. Rep. 598 483
Mary Tug Co. *v.* British India Steam Nav. Co. See "Meanatchy."
"Maryland," 19 Fed. Rep. 551 186
———— (burden of proof), 14 Fed. Rep. 367 33
Mason *v.* Johnson. See "Jeremiah" and "Providence."
——— *v.* Sainsbury, 3 Dougl. 61 278
"Massachusetts," 1 W. Rob. 371 ..... 108, 228, 234, 481
"Masten," Brown, Ad. 436 480
"Masters" and "Raynor," Brown, Ad. 342 472
"Matthew Cay," 5 P. D. 49; 49 L. J. Ad. 47; 41 L. T. 759; 28 W. R. 262; 4 Asp. M. C. 221 308
Matthews *v.* London Street Tramways Co., 58 L. J. Q. B. 12; 60 L. T. 47 98
"Maverick," 1 Sprague, 23 491
———— 75 Fed. Rep. 845 477
"Max Morris," 30 Davis, 1 ..... 131, 132
"May Queen," Ad. Div. 1st May, 1900 33
"Maybey" and "Cooper," 7 Blatchf. 378; 14 Wall. 204 ..... 7, 182
Mayhew *v.* Boyce, 1 Stark. 423 ..... 456, 493
Mayor, &c. of Colchester *v.* Brooke, 7 Q. B. 339 ..... 31, 68
"Mayumba," 21 Fed. Rep. 476 168
"Meanatchy," "Mary" Tug Co. *v.* British India Steam Nav. Co., (1897) App. Cas. 351; 66 L. J. P. C. 92 ..... 30, 46
"Mediana," (1900) App. Cas. 113; 69 L. J. Ad. 35; 82 L. T. 95; 48 W. R. 398; 9 Asp. M. C. 41 ..... 111, 112
"Medusa," 46 Fed. Rep. 303 319
"Melampus," Ship. Gaz., Dec. 22nd, 1903 459
"Mellona" (evidence), 10 Jur. 992 290
———— (speed; look-out; damages), 3 W. Rob. 7 ..... 103, 472
———— (bail; limitation; *in rem*), 3 W. Rob. 16 .. 71, 73, 74, 76, 83, 87, 146
"Melpomene," L. R. 4 A. & E. 129; 42 L. J. Ad. 45; 28 L. T. 76; 21 W. R. 956; 1 Asp. M. C. 515 293
Melton *v.* Nesbit, 1 C. & P. 70 292
"Melvina," 43 Fed. Rep. 77 486

PAGE
"Memnon," 62 L. T. 84; 6 Asp. M. C. 488..43, 48, 323, 424, 426, 429, 464
"Mentor," 1 C. Rob. 179 94
"Mercedes de Larrenaga," (1904) P. 215; 90 L. T. 250; 73 L. J. P. 65; 9 Asp. M. C. 571 ..... 221, 253
"Merchant Prince" (collision), 10 P. D. 139; 54 L. J. Ad. 79; 53 L. T. 914; 34 W. R. 231; 5 Asp. M. C. 520 ..... 334, 335, 364, 451
——————— (jamming of wheel chain), (1892) P. 179; 67 L. T. 251; 7 Asp. M. C. 208—C. A. 7, 9, 30, 31
"Mercurius" 308
Meretony *v.* Dunlope, 1 T. R. 260 276
"Merle," 31 L. T. 447; 2 Asp. M. C. 402 ..... 68, 69, 78, 81
"Merrimac," 14 Wall. 199 ..... 12, 495
"Mersey," (1901) P. 369; 70 L. J. Ad. 100; 85 L. T. 584; 9 Asp. M. C. 273 295
Mersey Docks and Harbour Board *v.* Turner, "Zeta," (1891) P. 216; 65 L. T. 230; 7 Asp. M. C. 64; on app. (1893) App. Cas. 468; 63 L. J. Ad. 17; 69 L. T. 630; 7 Asp. M. C. 369 ..... 76, 77, 239, 304, 312
Mersey Docks and Harbour Trustees *v.* Gibbs, L. R. 1 H. L. 93; 12 Jur. N. S. 571; 14 L. T. 677; 14 W. R. 872 ..... 90, 91, 92, 239
"Merthyr," 79 L. T. 676; 8 Asp. M. C. 475 ..... 36, 328, 372, 419
"Mesaba," 111 Fed. Rep. 215 412
Metcalfe *v.* Hetherington, 5 H. & N. 719; 11 Ex. 257; 8 W. R. 475—Ex. Ch. 239
"Meteor," Ir. Rep. 9 Eq. 567 ..... 17, 123, 229, 237, 249
"Mexico," 84 Fed. Rep. 504 ..... 4, 25
"Michigan," 52 Fed. Rep. 501 32
——— ——— 63 Fed. Rep. 280 ..... 375, 376, 377
Middlesex Quarry Co. *v.* "Albert," 2 Fed. Rep. 821 32
Midland Insurance Co. *v.* Smith, 6 Q. B. D. 561; 50 L. J. Q. B. 329; 45 L. T. 411; 29 W. R. 850 ..... 276, 278
"Midlothian," 15 Jur. 806 290
"Milan," Lush. 388; 31 L. J. Ad. 105; 5 L. T. 590 ..... 27, 40, 42, 60, 96, 98, 116, 121, 129, 131, 202, 268, 307
"Milanese," 4 Asp. M. C. 318, 418; on app. 43 L. T. 107; 4 Asp. M. C. 438—H. L. 310, 311, 370, 373, 382
Miller *v.* Powell, 2 Ct. of Sess. Cas. 3rd Ser. 976 300
"Milligan," 12 Fed. Rep. 338 19
Mills *v.* Armstrong. See "Bernina," No. 2.
Mills' Estate, *Re*, 34 Ch. D. 24; 56 L. J. Ch. 60; 55 L. T. 465; 35 W. R. 65 305
"Millwall," [1905] P. 155; 93 L. T. 426; 74 L. J. P. 61; 10 Asp. M. C. 15 179
"Milwaukee," Brown, Ad. 313 ..... 324, 327, 422, 447, 449, 467, 470
Milwaukee Rail. Co. *v.* Kellogg, 4 Otto, 469 14
"Minna," L. R. 2 A. & E. 97 ..... 97, 232, 476
"Minnehaha," Lush. 335; 15 Moo. P. C. 133; 30 L. J. Ad. 211; 7 Jur. N. S. 1257; 4 L. T. 810; 9 W. R. 925 188
"Minnie," (1894) P. 336; 71 L. T. 715; 7 Asp. M. C. 121 ..... 441, 504
——————— (damages), 26 Fed. Rep. 860 107
"Minnie C. Taylor," 52 Fed. Rep. 323 169

PAGE

"Miranda," 7 P. D. 185; 51 L. J. Ad. 56; 47 L. T. 447; 30 W. R. 615; 4 Asp. M. C. 595 ..... 286, 287
"Mischief," 39 Fed. Rep. 510 363
Mitchell *v.* Tarbutt, 5 T. R. 649 95
"Mobile," Swab. 69; on app. Swab. 127; 10 Moo. P. C. 467; 4 W. R. 708 ..... 222, 223, 394, 487
"Moderation," 1 Moo. P. C. 528; 9 L. T. 586; 1 Mar. Law Cas. O. S. 413 ..... 327, 455
Moffat *v.* Bateman, L. R. 3 P. C. 115; 6 Moo. P. C. N. S. 369 25
"Mohawk," 42 Fed. Rep. 189 384
"Mohler," 21 Wall. 230 495
"Molière," (1893) P. 217; 62 L. J. Ad. 102; 69 L. T. 263; 1 R. 639; 7 Asp. M. C. 364 ..... 330, 401, 436
Monaghan *v.* Horn, "Garland," Duval (Canada), 409 297
"Monarch" and "Success," 1 W. Rob. 21 ..... 123, 144
"Monkseaton," 14 P. D. 51; 58 L. J. Ad. 52; 60 L. T. 662; 37 W. R. 523; 6 Asp. M. C. 383 ..... 93, 306—310
"Monmouth" and "Raritan," 44 Fed. Rep. 809 498
"Monsoon" and "Neptune," Holt, 186; 13 L. T. 510; 2 Mar. Law Cas. O. S. 289 409
"Monte Rosa," (1893) P. 23; 62 L. J. Ad. 20; 68 L. T. 299; 41 W. R. 304; 7 Asp. M. C. 326 ..... 14, 18, 21, 55, 123, 124, 230, 533
"Monticello," 1 Pars. on Ship. (ed. 1869) 566 370
"Montreal," 1 Sp. 154 (note); 17 Jur. 538 221
"Moonlight," 50 Fed. Rep. 478 494
"Moorcock," 14 P. D. 64; 58 L. J. Ad. 73; 60 L. T. 654; 37 W. R. 439; 6 Asp. M. C. 357, 373 91
Morewood *v.* Pollok, 1 El. & B. 743 160
Morgan *v.* Ravey, 6 H. & N. 265 268
——— *v.* Sim. See "City of London."
"Morgengry" and "Blackcock," (1900) P. 1; 69 L. J. Ad. 3; 81 L. T. 417; 48 W. R. 121; 8 Asp. M. C. 591—C. A. 126, 179
"Morning Light," 2 Wall. 550 ..... 10, 381, 472, 475
Morrel *v.* Rheinfrank, 24 Fed. Rep. 94 64
Morrison *v.* General Steam Nav. Co., 8 Ex. 733; 22 L. J. Ex. 233; 17 Jur. 507; 1 W. R. 311—Ex. Ch. 19, 40
Mors *v.* Slue, 3 Keb. 72, 112, 135; 1 Ventris, 190, 238 ..... 265, 270
Morton *v.* Hutchinson. See "Frankland" and "Kestrel."
"Moselle," 32 L. T. 570; 2 Asp. M. C. 586 ..... 244, 256
Mostyn *v.* Fabrigas, 1 Cowp. 161 200
"Mount Hope," 84 Fed. Rep. 910 ..... 27, 36, 180, 376, 485
"Mourne," (1901) P. 68; 70 L. J. Ad. 7; 83 L. T. 748; 9 Asp. M. C. 155 ..... 469, 497
"Moxey," Abbot, Ad. 73 27
"Mud Hopper," 40 L. T. 462; 4 Asp. M. C. 103 ..... 12, 282
Muller *v.* Baldwin, L. R. 9 Q. B. 457; 43 L. J. Q. B. 164; 30 L. T. 864; 22 W. R. 909; 2 Asp. M. C. 304 246
"Mulliugar," 26 L. T. 326; 1 Asp. M. C. 252 ..... 71, 296
Mumford *v.* Crocker. See "Queen of the Bay."
Munks *v.* Jackson, 66 Fed. Rep. 571 182

PAGE
Munro *v.* Pilkington, 31 L. J. Q. B. 81 213
" Munroe," (1893) P. 248; 70 L. T. 246; 7 Asp. M. C. 407; 1 R. 642.. 273
Murphy *v.* Palgrave, 3 Mar. Law. Cas. O. S. 284; 21 L. T. 209 489
Mutrie *v.* Binney, 35 Ch. D. 614; 56 L. T. 455; 36 W. R. 131..... 211
" Myrtle," 44 Fed. Rep. 779..... 399
" Mystery," (1902) P. 115; 71 L. J. Ad. 39; 86 L. T. 359; 50 W. R. 414; 9 Asp. M. C. 281 .....90, 197, 297, 307

N.

" N. B. Starbuck," 29 Fed. Rep. 797 109
" N. Strong," (1892) P. 105; 67 L. T. 299; 7 Asp. M. C. 194 ....370, 373, 382
" Nabob," Brown, Ad. 115 .....97, 475
" Nacoochee," 28 Fed. Rep. 462 377
" Nador," (1909) P. 300; 100 L. T. 1007; 78 L. J. P. 106 .....9, 36
" Naples." 11 P. D. 124; 55 L. J. Ad. 64; 55 L. T. 584; 35 W. R. 59; 6 Asp. M. C. 30 .....306, 307
" Narragansett," 10 Blatchf. 475 .....334, 436, 440
" Natchez," 73 Fed. Rep. 267 184
National Steam Co. *v.* Merry. See " Pennsylvania."
" Nautik," (1895) P. 121; 64 L. J. Ad. 61; 11 R. 716; 72 L. T. 21; 43 W. R. 703; 7 Asp. M. C. 591 304
Neel *v.* Blythe, 42 Fed. Rep. 457 11
" Nellie," 80 L. T. 808; 8 Asp. M. C. 547..... 308
" Nellie Clark," 50 Fed. Rep. 585 357
" Nellie D.," Blatchf. 245 488
Nelson *v.* Couch, 15 C. B. N. S. 99; 33 L. J. C. P. 46; 10 Jur. N. S. 366; 8 L. T. 577; 11 W. R. 964 296
——— *v.* Fawcett, " Resolution" and " Langton," Marsd. Ad. Cas. 332 141
" Nepoter," L. R. 2 A. & E. 375; 38 L. J. Ad. 63; 22 L. T. 177; 18 W. R. 49 271
" Neptune," 1 Hag. 227..... 75
" Neptune the Second." 1 Dods. Ad. 467 .....82, 290, 480
" Nerano" and " Dromedary," 22 Ct. of Sess. Cas. 4th Ser. 237 318
" Nereus," 3 Bened. 238 488
——— 23 Fed. Rep. 448, 457..... 22
" Nessmore," 50 Fed. Rep. 616 .....336, 364
Netherlands Steamboat Co. *v.* Styles. See " Batavier."
" Nevada," 27 L. T. 720; 1 Asp. M. C. 477 206
——— 16 Otto, 154 473
" Never Despair," 9 P. D. 34; 53 L. J. Ad. 30; 50 L. T. 369; 32 W. R. 559; 5 Asp. M. C. 211 295
" New Eagle," 3 W. Rob. 441; 4 Not. of Cas. 426 81
" New Ed." and " Gustav," 9 L. T. 547; 1 Mar. Law Cas. O. S. 407.. 343
" New Pelton," (1891) P. 258; 60 L. J. Ad. 78; 65 L. T. 494; 7 Asp. M. C. 81..... 287, 292, 540, 542

PAGE

"New York," 40 Fed. Rep. 900 109
——— —— 175 U. S. Rep. 187 131
——— —— (keep her course), 82 Fed. Rep. 819 .....319, 411, 413, 448
——— —— Mayor of, *v.* Workman, 67 Fed. Rep. 347 86
New York and Baltimore Transportation Co. *v.* Philadelphia and Savannah Steamship Co., "Keystone State," 22 How. 461 167
New York, &c. Mail Steamship Co. *v.* Rumball, 21 How. 372 ..34, 321, 412
"New York Packet," 4 Lower Canada Rep. 343 238
"Newbattle," 10 P. D. 33; 54 L. J. Ad. 16; 52 L. T. 15; 33 W. R. 318; 5 Asp. M. C. 356 .....210, 295, 311, 366
Newman *v.* Lacy, Seld. Ser. Admiralty, II. lxxxiv. 139
"Newport News," 83 Fed. Rep. 522 326
"Ngapoota," (1897) App. Cas. 391; 66 L. J. P. C. 88—P. C. 46, 430
"Niagara," 44 Fed. Rep. 775 .....36, 496
——— —— 84 Fed. Rep. 902 370
"Nichols," 7 Wall. 656 .....3, 326, 329
Nicholson *v.* Mouncey, 15 East, 384 94
"Nicolina," 2 W. Rob. 175 294
"Nightwatch," Lush. 542; 8 Jur. N. S. 1161; 32 L. J. Ad. 47; 7 L. T. 396; 11 W. R. 189..... 197
"Nimrod," 15 Jur. 1201 .....440, 442
"Niobe," McCowan *v.* Baine (insurance), (1891) A. C. 401; 65 L. T. 502; 7 Asp. M. C. 89—H. L. 170, 274
——— (tug and tow), 13 P. D. 55; 57 L. J. Ad. 33; 59 L. T. 257; 36 W. R. 812; 6 Asp. M. C. 300—H. L. 27, 175, 176, 188, 190
Nixon *v.* Roberts, 1 J. & H. 739; 4 L. T. 679; 30 L. J. Ch. 844; 7 Jur. N. S. 820 .....75, 151, 163, 166
"No," 1 Sp. 184 292
Noble *v.* Wilson, "Eagle," and "Hopewell" (not reported) 140
Noden *v.* Ashton (not reported) 140
"Non Pareille," 33 Fed. Rep. 524 404
"Nor," 30 L. T. 576; 2 Asp. M. C. 264 .....3, 387, 418
"Nora Costello," 46 Fed. Rep. 869 11
"Nord Kap" and "Sandhill," (1894) App. Cas. 646.....23, 427, 439
"Norge," 55 Fed. Rep. 347.....410, 417
"Norma," 35 L. T. 418; 3 Asp. M. C. 272.....408, 414
"Normandie," 43 Fed. Rep. 151 434
——— ——— and "Pekin." See "Pekin."
"Normandy," L. R. 3 A. & E. 152; 39 L. J. Ad. 48; 23 L. T. 631; 18 W. R. 903 .....95, 160, 161
——— ——— (1904 P. 187; 90 L. T. 351; 73 L. J. P. 55; 9 Asp. M. C. 563 77
"North American" and "Wild Rose," 14 L. T. 68; 2 Mar. Law Cas. O. S. 319 .....236, 380
——— ——— ——— and "Teela Carmen," Swab. 358; Lush. 79; 12 Moo. P. C. 331; 5 Jur. N. S. 659 .....123, 287, 291
"North Britain," (1894) P. 77; 63 L. J. Ad. 33; 70 L. T. 210; 42 W. R. 243; 7 Asp. M. C. 413—C. A. 108, 273
North of England Iron Steamship Insurance Association *v.* Armstrong, L. R. 5 Q. B. 244; 39 L. J. Q. B. 81; 21 L. T. 822; 18 W. R. 520.. 277

PAGE

"Northampton," 1 Sp. 152 ..... 230, 253, 288, 478
"Northern Indiana," 3 Blatchf. 92 ..... 377, 475
"Northumbria," L. R. 3 A. & E. 6, 24; 39 L. J. Ad. 3, 24; 21 L. T. 681; 18 W. R. 188 ..... 102, 109, 151, 163, 299
"Norway," Br. & L. 377; 12 L. T. 57; 13 W. R. 296 271
Norwich Steamboat Co. *v.* Wright, 13 Wall. 104 161
Notara *v.* Henderson, L. R. 5 Q. B. 346; 39 L. J. Q. B. 167; 22 L. T. 577; on app. L. R. 7 Q. B. 225; 41 L. J. Q. B. 158; 26 L. T. 442; 20 W. R. 443 106
Nothard *v.* Pepper, 17 C. B. N. S. 39; 10 L. T. 782 289
"Notting Hill," 9 P. D. 105; 53 L. J. Ad. 56; 51 L. T. 66; 32 W. R. 764; 5 Asp. M. C. 241—Ex. Ch. 100, 114
Nouvion *v.* Freeman, 15 App. Cas. 1; 59 L. J. Ch. 337; 62 L. T. 189.. 212
"Nova Scotian" and "Quebec," 2 Quebec L. R. 1 ..... 11, 440
Nugent *v.* Smith, 1 C. P. D. 19; 45 L. J. C. P. 19; 33 L. T. 731; on app. 1 C. P. D. 423; 45 L. J. C. P. 697; 34 L. T. 827; 24 W. R. 237; 3 Asp. M. C. 198—P. C. 265, 266
"Nutmeg State," 62 Fed. Rep. 847 ..... 410, 418
"Nymph," Swab. 86 ..... 73, 74

O.

"Oakfield," 11 P. D. 34; 55 L. J. Ad. 11; 54 L. T. 578; 34 W. R. 687; 5 Asp. M. C. 575 ..... 231, 237, 308, 309
Oakley *v.* Speedy, 40 L. T. 881; 4 Asp. M. C. 134 ..... 63, 280
"Obdam," 60 Fed. Rep. 637 369
"Obey," L. R. 1 A. & E. 102; 12 Jur. N. S. 817 ..... 158, 222, 232
Occidental and O. SS. Co. *v.* Smith, 74 Fed. Rep. 261 ..... 331, 440, 441
Ocean Steamship Co. *v.* Apcar & Co. See "Arratoon Apcar."
"Ocean Wave," Marshall *v.* Moran, 6 Moo. P. C. N. S. 492; L. R. 3 P. C. 205; 23 L. T. 218 ..... 25, 177, 178, 227, 228, 230, 231, 232, 253
"Oceanic," 61 Fed. Rep. 338 397
——— 88 L. T. 303; 9 Asp. M. C. 378 ..... 374, 376
"Oceano" and "Virgo," 3 P. D. 60 ..... 402, 447
"Oceanus," 5 Bened. 545; on app. 12 Blatchf. 430 ..... 404, 436, 449
"Octavia Stella," 57 L. T. 632; 6 Asp. M. C. 182 214
"Oder," 13 Fed. Rep. 272 359
"Odessa," 46 L. T. 77; 4 Asp. M. C. 493—C. A. 396, 541
"Ogemaw," 32 Fed. Rep. 919 ..... 182, 472
Ogle *v.* Barnes, 8 T. R. 188 2
"Ohio," 91 Fed. Rep. 547 493
"Ole Bull," (1905) P. 52; 92 L. T. 807; 74 L. J. P. 52; 10 Asp. M. C. 84 ..... 221, 250, 254
"Oliver," 22 Fed. Rep. 848 ..... 472, 539
"Olympia," 61 Fed. Rep. 120 10
Omoa Cleland Coal and Iron Co. *v.* Huntley, 2 C. P. D. 464; 37 L. T. 184; 25 W. R. 675; 3 Asp. M. C. 501 270

PAGE

O'Neil *v.* Sears, 2 Sprague, 52 485
"Ophelia," 44 Fed. Rep. 941 385
"Oporto," (1897) P. 249; 66 L. J. Ad. 49; affg. 75 L. T. 599; 8 Asp. M. C. 213 441
"Orange," 46 Fed. Rep. 408 384
"Oratava" and "Janet," Marsd. Ad. Cas. 337 144
"Oravia," 97 L. T. 523; 10 Asp. M. C. 436 ..... 373, 379
"Oregon" (speed), 27 Fed. Rep. 751 374
——— (flare), 45 Fed. Rep. 62 365
——— (flare), 51 Dav. 186 452
Orhanovich *v.* "America," 4 Fed. Rep. 337 196
"Orient," 39 L. J. Ad. 8; 21 L. T. 761; 3 Mar. Law Cas. O. S. 321; on app. nom. Yeo *v.* Tatham, 8 Moo. P. C. N. S. 74; L. R. 3 P. C. 696; 40 L. J. Ad. 29; 24 L. T. 918; 20 W. R. 6; 1 Asp. M. C. 108.. 73, 81, 82, 293, 296
"Orion," (1891) P. 307; 60 L. J. Ad. 90; 65 L. T. 500; 7 Asp. M. C. 88 358
"Ornen," Ct. of App. 23 Jan. 1900 413
"Orpheus," L. R. 3 A. & E. 308; 40 L. J. Ad. 24; 23 L. T. 855 ..76, 164
"Orwell," 13 P. D. 80; 57 L. J. Ad. 61; 59 L. T. 312; 36 W. R. 703; 6 Asp. M. C. 309 ..... 114, 302, 465
——— Ad. Div. May, 1887 533
——— Ad. Div. 17th December, 1887 ..... 415, 487
"Oscar," 10 L. T. 789; 12 W. R. 872 290
"Osceola," 34 Fed. Rep. 921 111
"Osmanli," 7 Not. of Cas. 507 289
"Otter," L. R. 4 A. & E. 203; 30 L. T. 43; 22 W. R. 557; 2 Asp. M. C. 208 ..... 30, 291, 380, 492
"Otto" and "Thorsa." See Wilson *v.* Currie.
"Ovingdean Grange," (1902) P. 208; 71 L. J. Ad. 105; 87 L. T. 15—C. A. 18, 21, 23, 542
Owen *v.* "Providence," Marsd. Ad. Cas. 13 80
"Owen Wallis," L. R. 4 A. & E. 175; 43 L. J. Ad. 36; 30 L. T. 41; 22 W. R. 695; 2 Asp. M. C. 206 ..... 317, 498
"Owl" and "Ariadne." See Little *v.* Burns.
Owners of "Velasquez" *v.* Briggs. See "Velasquez."

P.

"P. Caland." (1893) App. Cas. 207; 62 L. J. Ad. 41; 68 L. T. 469; 7 Asp. M. C. 317—H. L. 340, 346
"P. I. Nevius" and "Wide Awake," 67 Fed. Rep. 158 183
"Pacific," 9 P. D. 124; 53 L. J. Ad. 67; 51 L. T. 127; 33 W. R. 124; 5 Asp. M. C. 263 ..... 359, 432, 489
"Pactolus," Swab. 173; 28 L. T. O. S. 220; 5 W. R. 167 101
Page *v.* Haslewood, Seld. Ser. Admiralty, II. lxxxiii. 136
—— *v.* Defries, 7 B. & S. 137 65
"Palatine," 27 L. T. 631; 1 Asp. M. C. 468 ..... 409, 415, 438, 488

PAGE
"Palermo," 9 P. D. 6; 53 L. J. Ad. 6; 49 L. T. 551; 32 W. R. 403; 5 Asp. M. C. 165 289
———— (crew spaces), 10 P. D. 21; 54 L. J. Ad. 46; 52 L. T. 390; 33 W. R. 643; 5 Asp. M. C. 369 156
"Palestine," 13 W. R. 111 41
"Palinurus," 37 W. R. 266; affg. 13 P. D. 14; 57 L. J. Ad. 21; 58 L. T. 533; 36 W. R. 768; 6 Asp. M. C. 271 359
"Palmetto." 1 Biss. 140 496
Pangburn *v.* Gunn, 4 Fed. Rep. 35 483
"Panther," 1 Sp. 31 ..... 440, 442
"Para," Ad. Div. 4th March, 1886 363
"Paramatta," Stockton, V. Ad. Dig. Canada, 192 391
"Parana," 1 P. D. 452; 45 L. J. Ad. 108; 35 L. T. 32; 3 Asp. M. C. 220; on app. 2 P. D. 118; 36 L. T. 388; 25 W. R. 596; 3 Asp. M. C. 399 ..... 114, 115, 310
Parke *v.* Sorrell, Seld. Ser. Admiralty, II. lxxxiv. 138
Parker *v.* North British Rail. Co., 25 Ct. of Sess. Cas. 4th Ser. 1059 93
"Parkersburg," 5 Blatchf. 247 175
"Parlement Belge," 4 P. D. 129; 48 L. J. Ad. 18; 40 L. T. 222; on app. 5 P. D. 197; 42 L. T. 273; 28 W. R. 642; 4 Asp. M. C. 234—C. A. 71, 72, 73, 82, 209
Parnaby *v.* Lancaster Canal Co., 11 Ad. & El. 223; 3 P. & D. 162; 9 L. J. Ex. 338—Ex. Ch. 91, 92
Parnell *v.* Mort, Liddell & Co., 29 Ch. D. 325; 53 L. T. 186; 33 W. R. 481 312
"Pasithea," 5 P. D. 5 294
"Passaic," 76 Fed. Rep. 460 33
"Patience," 167 Fed. Rep. 855 169
"Patria," 92 Fed Rep. 411 ..... 376, 457
———— L. R. 3 A. & E. 436; 41 L. J. Ad. 23; 24 L. T. 849; 1 Asp. M. C. 71 ..... 76, 146
"Patriotto" and "Rival," 2 L. T. 301 ..... 476, 479
"Patroclus," 13 P. D. 54; 58 L. T. 774; 36 W. R. 928; 6 Asp. M. C. 285 361
Peake *v.* Screech, 7 Q. B. 603; 14 L. J. Q. B. 317 256
Pearce *v.* Page, 24 How. 228 498
"Peckforton Castle," 2 P. D. 222; 47 L. J. Ad. 12; 37 L. T. 539; 26 W. R. 81; on app. 3 P. D. 11; 47 L. J. Ad. 69; 37 L. T. 816; 26 W. R. 346; 3 Asp. M. C. 533—C. A. 397, 435, 436
"Peerless," 6 L. T. 107 309
———— Lush. 30; 29 L. J. Ad. 49; 2 L. T. 25; on app. nom. Prowse *v.* European, &c. Co., 13 Moo. P. C. 484; 30 L. J. Ad. 89; 3 L. T. 125 ..... 9, 200, 217, 231—235, 481, 502
Peers *v.* Cole, Seld. Ser. Ad. II. lxxxiv. 138
"Pegasus," 19 Fed. Rep. 46 17
"Pekin," (1897) App. Cas. 532; 77 L. T. 444; 8 Asp. M. C. 367 .. 318, 400, 401, 402, 403, 446
"Pelaw" (not reported) 311
Pettie *v.* Boston Tow Boat Co., 49 Fed. Rep. 464 107
"Pennland," 23 Fed. Rep. 551 ..... 34, 376

PAGE

"Pennsylvania," 12 Fed. Rep. 914 60
——— ——— National Steamship Co. *v.* Merry, 23 L. T. 55; 3 Mar. Law Cas. O. S. 477—P. C. 7, 41, 212, 348, 369
——— ——— 19 Wall. 125; 31 L. T. 103 ..... 60, 212, 348, 369, 374, 376
Penny *v.* Wimbledon Urban Council, (1898) 2 Q. B. 212; 78 L. T. 748; 67 L. J. Q. B. 754 89
"Pensher," Swab. 211 103
"Pepperell," Swab. 12 382
"Peri," 32 L. J. Ad. 46; 8 Jur. N. S. 1230; 11 W. R. 44 306
"Perim," Ad. Div. 10th Nov. 1886 ..... 287, 444
Perkins *v.* Gingell, 50 J. P. 277 544
"Perkiomen," 27 Fed. Rep. 573 370
"Perth," 3 Hag. 414 380
"Peru," Pritch. Ad. Dig. 3rd ed. 1412 ..... 25, 228
"Peshawur," 8 P. D. 32; 52 L. J. Ad. 30; 48 L. T. 796; 31 W. R. 660; 5 Asp. M. C. 89 211
"Peshtigo," 25 Fed. Rep. 488 ..... 126, 376
"Pet," 20 L. T. 961; 17 W. R. 899 296
"Petersfield" and "Judith Randolph," Wildman *c.* Blake, Marsd. Ad. Cas. 332 ..... 123, 128, 140
Petley *v.* Catto. See "Christina."
"Petrel," (1893) P. 320; 62 L. J. Ad. 92; 70 L. T. 417; 7 Asp. M. C. 434 ..... 96, 99, 157
Petrie *v.* Owners of "Rostrevor," (1898) 2 Ir. 556 304
"Phebe," Ware's Rep. 263 ..... 64, 69, 146
"Philadelphian," (1900) P. 262; 69 L. J. Ad. 31; 81 L. T. 728; 48 W. R. 431; 9 Asp. M. C. 72 ..... 52, 363
Philips *v.* Baillie, 3 Dougl. 374 271
——— ——— *v.* Homfray, 24 Ch. D. 439; 52 L. J. Ch. 833; 49 L. T. 5; 32 W. R. 6 74
"Philotaxe," 37 L. T. 540; 3 Asp. M. C. 512 ..... 405, 435, 479
"Picton," 4 Duval (Canada), 648 200
——— (1910) P. 46 358
"Pierrepont," 42 Fed. Rep. 687 189
"Pieve Superiore," L. R. 4 A. & E. 170; 43 L. J. Ad. 1; 29 L. T. 702; 22 W. R. 416; on app. L. R. 5 P. C. 482; 43 L. J. Ad. 20; 30 L. T. 887; 22 W. R. 777; 2 Asp. M. C. 319 ..... 76, 270, 271
"Pilgrim," 57 Fed. Rep. 670 498
——— (1895) P. 117; 64 L. J. Ad. 78; 11 R. 718 157
Pilk *v.* Venore, 1 Molloy (ed. 1769), 359 62
"Pilot," 20 Fed. Rep. 860 352
Pink *v.* Fleming, 25 Q. B. D. 396; 59 L. J. Q. B. 559; 63 L. T. 413; 6 Asp. M. C. 554—C. A. 114
"Pladda," 2 P. D. 34; 46 L. J. Ad. 61 ..... 9, 12, 473, 483
"Planet," Brown, Ad. 124 478
"Plato" and "Perseverance," Holt, 262 ..... 487, 493
"Pleiades" and "Jane," (1891) App. Cas. 259; 60 L. J. P. C. 59; 65 L. T. 169; 7 Asp. M. C. 41 288
Pluckwell *v.* Wilson, 5 Car. & P. 375 445
Plummer *v.* Wildman, 3 M. & S. 482 ..... 279, 283

PAGE
Plummer *v.* Woodburn, 4 B. & C. 625 212
Pollok *v.* M'Alpin. See "Lochlibo."
Pontifex *v.* Midland Ry. Co., 3 Q. B. D. 23; 47 L. J. Q. B. 28; 37 L. T. 403; 26 W. R. 209 268
Pooty *v.* Rudd, Seld. Ser. Ad. II. lxxxiv 137
"Port Victoria," (1902) P. 25; 71 L. J. Ad. 36; 86 L. T. 804; 9 Asp. M. C. 314 ..... 27, 76
Portevant *v.* "Bella Donna," Newb. Ad. 510 477
"Portia," 64 Fed. Rep. 811 ..... 18, 131
"Potomac," 8 Wall. 590 ..... 290, 409, 413
——— 15 Otto, 630; 13 Fed. Rep. 399 ..... 272, 277, 278
Potter *v.* Keeble, Seld. Ser. Ad. II. lxxxiv. 138
"Pottsville," 12 Fed. Rep. 631 376
"Pough Reepsee," 162 Fed. Rep. 494 77
Poulton *v.* London & South Western Ry. Co., L. R. 2 Q. B. 534; 36 L. J. Q. B. 294; 17 L. T. 841; 16 W. R. 309 66
Powell *v.* Trevyne, Seld. Ser. Ad. II. lxxxiv 137
"Premier," 51 Fed. Rep. 766 19
"Pres. Briarly," 24 Fed. Rep. 478 190
Price *v.* Dewhurst, 8 Sim. 279 212
Priestley *v.* Fowler, 3 M. & W. 1 ..... 99, 195
"Prince Leopold de Belgique," (1909) P. 103; 100 L. T. 201; 78 L. J. P. 57; 7 Asp. M. C. 203 ..... 442, 443
"Princess," 52 L. T. 932; 5 Asp. M. C. 451 109
"Princesse Clémentine," (1897) P. 18; 66 L. J. Ad. 23; 75 L. T. 695; 8 Asp. M. C. 222 285
"Princeton," 3 P. D. 90; 47 L. J. Ad. 33; 38 L. T. 260; 3 Asp. M. C. 562 ..... 221, 230, 253, 308, 478
——— 61 Fed. Rep. 116 369
"Prins Hendrick," (1899) P. 177; 68 L. J. Ad. 86; 80 L. T. 838; 8 Asp. M. C. 548 218
"Printz Frederick," 2 Dods. 451 94
"Priscilla," L. R. 3 A. & E. 125; 23 L. T. 566; 1 Asp. M. C. 468 .. 392, 393, 438, 463, 488
"Privateer," 7 L. R. Ir. 105 ..... 386, 394
"Protector," 1 W. Rob. 45 81
"Providence," 98 Fed. Rep. 133 ..... 60, 112
"Public Opinion," 2 Hag. 398 200
Purkis *v.* Flower, L. R. 9 Q. B. 114; 43 L. J. Q. B. 33; 30 L. T. 40; 22 W. R. 239; 2 Asp. M. C. 226 ..... 78, 303
"Pyrus" and "Smales," 2 Mar. Law Cas. O. S. 288; Holt, 40 3

Q.

Quarman *v.* Burnett, 6 M. & W. 499 176
"Quebec" and "Charles Chaloner," 19 Lower Canada Jurist, 201 .. 42, 241
——— 1 Quebec L. R. 1 440
"Queen," L. R. 2 A. & E. 354; 38 L. J. Ad. 39; 20 L. T. 855 .. 57, 222, 232

PAGE
"Queen," 40 Fed. Rep. 694 132
——— *v.* &c. See Reg. *v.* &c.
"Queen Elizabeth," 100 Fed. Rep. 874 390
"Queen of the East" and "Calypso," 4 Bened. 103 478
"Queen of the Orwell," 7 L. T. 839; 1 Mar. Law Cas. O. S. 300; 11 W. R. 499 58
"Queen Victoria," 7 Asp. M. C. 9; 64 L. T. 520 ..... 409, 479
"Quickstep," 9 Wall. 665 ..... 187, 189
——— (tug and tow), 15 P. D. 196; 59 L. J. Q. B. 65; 63 L. T. 713; 6 Asp. M. C. 603 ..... 70, 172, 173, 196

R.

"R. B. Forbes," 1 Sprague, 328 182
"R. C. Veit," 56 Fed. Rep. 122 183
"R. H. Waterman" and "Transfer," 82 Fed. Rep. 478 497
"R. L. Alston," 7 P. D. 49; 46 L. T. 208; 30 W. R. 707; 4 Asp. M. C. 509; on app. 8 P. D. 5; 48 L. T. 469; 5 Asp. M. C. 43—C. A. 123, 498, 529
"R. R. Kirkland," 48 Fed. Rep. 760 ..... 32, 406
"Racine," (1906) P. 273; 95 L. T. 597; 75 L. J. P. 83; 10 Asp. M. C. 300 ..... 102, 109, 113
Radley *v.* London & North Western Rail. Co., 1 App. Cas. 754; 46 L. J. Ex. D. 573; 35 L. T. 637; 25 W. R. 147 19
"Radnorshire," 5 P. D. 172; 49 L. J. Ad. 48; 43 L. T. 319; 29 W. R. 476; 4 Asp. M. C. 338 291
Raisin *v.* Mitchell, 9 C. & P. 613 28
"Raithwaite Hall," 30 L. T. 233; 2 Asp. M. C. 210 501
"Rajah," L. R. 3 A. & E. 539; 41 L. J. Ad. 97; 27 L. T. 102; 21 W. R. 14; 1 Asp. M. C. 403 160
"Raleigh" and "Niagara," 44 Fed. Rep. 781 ..... 182, 185, 369, 371
"Ralph Creyke," 55 L. T. 155; 6 Asp. M. C. 19 ..... 491, 492, 497
Ramsay *v.* Quinn, Ir. Rep. 8 C. L. 322 99
Randal *v.* Cockrane, 1 Ves. Sen. 98 276
"Ranger." See "Cologne" and "Ranger."
Rankine *v.* Rasehen, 4 Ct. of Sess. Cas. 4th Ser. 725 166
"Ranza," Ship. Gaz., 13th December, 1898 413
"Ratata," Preston Corporation *v.* Biornstad, (1898) App. Cas. 513; 67 L. J. Ad. 73; 78 L. T. 797; 8 Asp. M. C. 427 ..... 25, 67, 93, 187, 188, 189, 239
Rayne, *Ex parte*, 1 Gale & Dav. 374; 1 Q. B. 982; 10 L. J. Q. B. 354 .. 163
"Reba," 22 Fed. Rep. 546 109
"Rebecca," Ware's Rep. 188 ..... 64, 146
"Rebecca Shepherd," 33 Fed. Rep. 926 10
"Recepta" (prohibition; altering judgment), (1893) P. 255; 62 L. J. Ad. 18; 69 L. T. 252; 41 W. R. 561; 7 Asp. M. C. 359 309
——— (limitation), 14 P. D. 131; 58 L. J. Ad. 70; 61 L. T. 698; 6 Asp. M. C. 433 156

PAGE
"Red Cross," 97 L. T. 610; 10 Asp. M. C. 521 403
Redhead *v.* Midland Rail. Co., L. R. 2 Q. B. 412; on app. *ibid.* 4 Q. B. 379 266
Redpath *v.* Allan. See "Hibernian."
Reed *v.* Welford, Marsd. Ad. Cas. 308 140
Reg. *v.* Anderson, L. R. 1 C. C. R. 161; 38 L. J. M. C. 12; 19 L. T. 400; 17 W. R. 208 ..... 199, 281
—— *v.* Barrett, 2 C. & K. 343 280
—— *v.* Carr, 10 Q. B. D. 76; 52 L. J. M. C. 12; 47 L. T. 450; 31 W. R. 121; 4 Asp. M. C. 604 ..... 199, 281
—— *v.* City of London Court Judge, 8 Q. B. D. 609; 51 L. J. Q. B. 305; 30 W. R. 566 200
—— *v.* Haines, 2 C. & K. 368 280
—— *v.* Judge of City of London Court, (1892) 1 Q. B. 273; 61 L. J. Q. B. 337; 66 L. T. 135; 40 W. R. 215 295
—— *v.* Keyn, 2 Ex. D. 63; 46 L. J. M. C. 17 ..... 59, 66, 198, 201, 281
—— *v.* Lewis, 1 D. & B. C. C. 182 281
—— *v.* Menham, 1 F. & F. 369 281
—— *v.* Polwart, 1 Q. B. 818 71
—— *v.* Sattler, D & B. C. C. 525 281
—— *v.* Seberg, L. R. 1 C. C. R. 264; 39 L. J. M. C. 133 (nom. Reg. *v.* Von Seberg); 22 L. T. 523 (nom. Reg. *v.* Sven Seberg) 281
—— *v.* Spence, 1 Cox, C. C. 352 280
—— *v.* Stanton, 8 Ell. & B. 445; 27 L. J. Q. B. 105; 4 Jur. N. S. 10, 332; 6 W. R. 39 ..... 244, 247, 256, 257
—— *v.* Taylor, 9 Car. & P. 672 280
—— *v.* Williams, 9 App. Cas. 418; 53 L. J. P. C. 64; 51 L. T. 546 .. 91
"Regina del Mare," Br. & L. 315 278
"Reginald," 97 L. T. 608; 10 Asp. M. C. 519 352
"Reiher," 45 L. T. 767; 4 Asp. M. C. 478 360
"Reinbeck," 60 L. T. 209; 6 Asp. M. C. 366 211
Reischer *v.* Borwick, (1894) 2 Q. B. 548; 63 L. J. Q. B. 753; 71 L. T. 238; 7 Asp. M. C. 493—C. A. 104, 272
"Relief," 63 Fed. Rep. 169 416
———— Olcott, Ad. 104 385
Reney *v.* Magistrates of Kirkcudbright, (1892) Asp. Cas. 264; 61 L. J. P. C. 23; 67 L. T. 474; 7 Asp. M. C. 221—H. L. 90, 92, 235, 238
"Renovator," 30 Fed. Rep. 194 489
"Republic," 29 Fed. Rep. 98 435
"Rescue," 2 Sprague, 16 182
"Resolution," 60 L. T. 430; 6 Asp. M. C. 363 ..... 328, 376, 378, 380
———— and "Langton," Nelson *v.* Fawcett, Marsd. Ad. Cas. 332 314
"Retriever" and "Queen," 17 L. T. 329; 2 Mar. Law Cas. O. S. 555.. 282
Rex *v.* Allen, 7 Car. & P. 153 280
—— *v.* Collector of Customs, 2 M. & S. 223 98
—— *v.* Green, 7 Car. & P. 156 280
—— *v.* Lambe, 5 T. R. 76 245
—— *v.* Neale, 8 T. R. 241 245
—— *v.* Watts, 2 Esp. 675 88

PAGE

"Rhein," 86 L. T. 265; 9 Asp. M. C. 278 539
"Rhode Island," Olcott, Ad. 505; 1 Blatchf. 363 ..... 404, 436
——— ——— 17 Fed. Rep. 554 376
"Rhondda," Scicluna *v.* Stevenson, 8 App. Cas. 549; 49 L. T. 210; 5 Asp. M. C. 114 ..... 422, 441, 492
"Rhosina," 10 P. D. 131; 54 L. J. Ad. 72; 53 L. T. 30; 33 W. R. 794; 5 Asp. M. C. 460 ..... 90, 92, 230, 232, 239
"Richmond" and "E. Heipershausen," 63 Fed. Rep. 1020 ..... 19, 183, 472
"Richer," 2 Pr. Ad. Dig. 1747 101
"Rigaud," 11 Quebec L. R. 382 472
"Rigborgs Minde," 8 P. D. 132; 52 L. J. Ad. 74; 49 L. T. 232; 5 Asp. M. C. 123, C. A. ..... 86, 129, 220, 222, 230, 232, 233, 234, 252, 305—310
"Rijnstroom," 80 L. T. 422; 8 Asp. M. C. 538 ..... 309, 311, 312
Rio Grande do Sul Steamship Co., *In re*, 5 Ch. D. 282; 46 L. J. Ch. 277; 36 L. T. 603; 26 W. R. 328; 3 Asp. M. C. 424—C. A. 74, 79
"Ripon," 10 P. D. 65; 54 L. J. Ad. 56; 52 L. T. 438; 33 W. R. 659; 5 Asp. M. C. 365 ..... 55, 228, 231, 236, 337
——— (pilot), 6 Not. of Cas. 245 233
"Ripon City," (1897) P. 226; 66 L. J. Ad. 110; 77 L. T. 98; 8 Asp. M. C. 304 ..... 71, 73, 82
"Risca," Ad. Div. 25th March, 1886 290
"Risoluto," 8 P. D. 109; 52 L. J. Ad. 46; 48 L. T. 109; 31 W. R. 657; 5 Asp. M. C. 93 113
Ritchie *v.* Bowsfield, 7 Taunt. 309 216
"River Derwent," 64 L. T. 509; 7 Asp. M. C. 37—H. L. 292, 542, 543
"River Lagan," 57 L. J. Ad. 28; 55 L. T. 773; 6 Asp. M. C. 281 .. 197, 298, 307, 502
River Wear Commissioners *v.* Adamson, 1 Q. B. D. 546; 29 L. T. 530; 22 W. R. 47; 3 Asp. M. C. 242; on app. 2 App. Cas. 743; 47 L. J. Q. B. 193; 37 L. T. 543; 26 W. R. 217; 3 Asp. M. C. 521 .. 64, 68, 70, 78, 82, 164, 219
"Riversdale," 53 Fed. Rep. 286 ..... 10, 476
"Roanoke," (1908) P. 231; 99 L. T. 78; 77 L. J. P. 115 .. 408, 411, 414, 465
"Rob Roy," 3 W. Rob. 190 ..... 5, 336
"Robert," Ad. Ct. 9th June, 1818 145
"Robert and Ann," and "Lloyd's," Holt, 55 ..... 358, 472
"Robert Burnett, 46 Fed. Rep. 415 184
"Robert Dixon," 40 L. T. 333; 4 P. D. 121; 27 W. R. 736; 4 Asp. M. C. 95; on app. 5 P. D. 54; 42 L. T. 344; 28 W. R. 716; 4 Asp. M. C. 246 ..... 189—192
"Robert H. Rathbun," 38 Fed. Rep. 549 392
Robinson *v.* Detroit, &c. Steam Nav. Co., 73 Fed. Rep. 883 440
"Rockaway," 19 Fed. Rep. 449 ..... 32, 486
Rockett *v.* Chippendale, (1891) 2 Q. B. 293; 60 L. J. Q. B. 782; 64 L. T. 641 312
Rodrigues *v.* Melhuish, 10 Ex. 110; 24 L. J. Ex. 26; 2 W. R. 518 253
"Roecliff," L. R. 2 A. & E. 363; 38 L. J. Ad. 56; 20 L. T. 586; 17 W. R. 745 75
Rolles *v.* Newell, 25 Q. B. D. 335; 59 L. J. Q. B. 423; 63 L. T. 384; 39 W. R. 96; 6 Asp. M. C. 563 544

PAGE
"Romance," (1901) P. 15; 70 L. J. Ad. 1; 83 L. T. 488; 9 Asp. M. C. 149 ..... 340, 344, 362
"Rona," 7 P. D. 247; 51 L. J. Ad. 65; 46 L. T. 601; 30 W. R. 614; 4 Asp. M. C. 520 303
——— and "Ava," 29 L. T. 781; 2 Asp. M. C. 182 ..123, 124, 327, 337, 383, 399, 432
"Rondane," 69 L. J. Ad. 114; 82 L. T. 828; 9 Asp. M. C. 106....41, 378
"Rosalie," 5 P. D. 245; 50 L. J. Ad. 3; 44 L. T. 32; 4 Asp. M. C. 384 ..... 30, 340, 348, 390, 391, 413, 415, 457
"Rose," 2 W. Rob. 1 ..... 418, 432
Rose *v.* Miles, 4 M. & S. 101 109
"Rose Culkin," 52 Fed. Rep. 328..... 168, 407
"Rose of England," 59 L. T. 262; 6 Asp. M. C. 304..... 497
"Rosetta," 59 L. T. 342; 6 Asp. M. C. 310 ..... 378, 430
"Roslyn," 22 Fed. Rep. 687 30
"Rossendale," 2 Pritch. Ad. Dig. (ed. 1865) 591 291
Rothwell *v.* Lucas, Seld. Ser. Ad. II. lxxxiii. 136
"Rougemont," (1893) P. 275; 62 L. J. Ad. 121; 70 L. T. 420; 1 R. 658; 7 Asp. M. C. 437..... 295
Rourke *v.* White Moss Colliery Co., 2 C. P. D. 205; 46 L. J. C. P. 283; 36 L. T. 49; 25 W. R. 263—C. A. 175
"Royal Charter," L. R. 2 A. & E. 362; 38 L. J. Ad. 36; 20 L. T. 1019; 18 W. R. 49 308
Ruabon Steamship Co. *v.* London Assurance, (1900) App. Cas. 6; 69 L. J. Q. B. 86; 81 L. T. 585; 48 W. R. 225; 8 Asp. M. C. 369—H. L. 101
"Ruby" (liens), (1898) P. 52; 67 L. J. Ad. 28; 78 L. T. 267; 8 Asp. M. C. 389 78
———— (pilotage), 15 P. D. 164; 59 L. J. Ad. 68; 63 L. T. 735; 39 W. R. 42; 6 Asp. M. C. 577 ..... 247, 253, 308
"Ruby Queen," Lush. 266 ....82, 481
Ruckton *c.* Lambton, Seld. Ser. Admiralty, II. lxxxiii. 135
Rundell *v.* Compagnie Générale Transatlantique, 94 Fed. Rep. 366 211
Russell *c.* Joad, Seld. Ser. Admiralty, II. lxxxiv..... 139
"Russia," 3 Bened. 471; 21 L. T. 440 492
"Rutland" (pilot), (1897) App. Cas. 333; 66 L. J. Ad. 105; 76 L. T. 662; 8 Asp. M. C. 270—H. L. 255, 257
Rutter *c.* Ribbatira, Seld. Ser. Admiralty, II. lxxxiii..... 136

S.

"S. Anderson," 27 Fed. Rep. 392 152
"S. Shaw," 6 Fed. Rep. 93 19
"S. S. Wilhelm," 59 Fed. Rep. 169 189
"S. W. Morris," 59 Fed. Rep. 616 189
"Saale," 63 Fed. Rep. 478..... 376
"Sagua" *v.* "Grace," 42 Fed. Rep. 461 190

PAGE

"Saint Aubin," (1907) P. 60; 95 L. T. 586; 76 L. J. P. 25; 10 Asp. M. C. 298 ..... 474, 535
"Saint Andries," 54 L. T. 278; 5 Asp. M. C. 552 403
"Saint Cloud," Br. & L. 4; 8 L. T. 54 ..... 271, 302
"Saint Cyran" and "Henry," 12 W. R. 1014 462
Saint John *v.* Grant, Seld. Ser. Admiralty, II. lxxxiii. 136
"Saint John's," 42 Fed. Rep. 75 470
"Saint Lawrence," 19 Fed. Rep. 328 477
"Saint Olaf," L. R. 2 A. & E. 360; 38 L. J. Ad. 41; 20 L. T. 758; 17 W. R. 743 79
"Saint Paul," (1908) P. 320; 100 L. T. 184; 78 L. J. P. 1; 11 Asp. M. C. 152; on app., (1909) P. 43 ..... 3, 370, 373
"Saltburn," (1892) P. 333; 69 L. T. 88; 1 R. 543; 7 Asp. M. C. 325.. 312
"Sam Gaty," 8 Bissel, 190 108
"Sammie," 36 Fed. Rep. 568 492
"Sampson," 4 Blatchf. 28 281
"Samuel H. Crawford," 6 Fed. Rep. 906 341
"Sandhill." *See* Nord Kap.
"Sans Pareil, H.M.S.," (1900) P. 267; 69 L. J. Ad. 127; 82 L. T. 606; 9 Asp. M. C. 78..6, 17, 20, 51, 54, 59, 94, 366, 458, 459, 461, 462, 469, 471
"Sapphire," 11 Wall. 164 ..... 482, 485
——— 18 Wall. 51 128
——— and "Girdleness," Ad. Div. Feb. 1884 48
"Sara," 14 App. Cas. 209; 58 L. J. Ad. 57; 61 L. T. 26; 38 W. R. 129; 6 Asp. M. C. 413—H. L. 76
"Saracen," 2 W. Rob. 451; on app. nom. Bernard *v.* Hyne, 6 Moo. P. C. 56; 11 Jur. 253; 4 Not. of Cas. 498 ..... 78, 79, 81
"Saragossa," 69 L. T. 664; 7 Asp. M. C. 289—H. L. 411, 413, 425, 437, 438, 455
"Sarah," Lush. 549 ..... 77, 303, 304
"Saratoga," 1 Fed. Rep. 730 18
"Sardinian," Ad. Div. 9th Dec. 1886 305
"Satanita," (1897) App. Cas. 59; 66 L. J. Ad. 1; 75 L. T. 337; 8 Asp. M. C. 190 156
"Saucy Lass" and "Bolderaa," Holt, 205 415
"Savernake" (costs), 5 P. D. 166; 49 L. J. Ad. 71; 29 W. R. 123; 5 Asp. M. C. 34, n. 309, 310
"Saxonia," Lush. 410; 15 Moo. P. C. 262; 31 L. J. Ad. 201; 6 L. T. 6; 8 Jur. N. S. 315; 10 W. R. 431..198, 205, 207, 318, 334, 335, 336, 361
——— 2 Mar. Law Cas. O. S. 417; 15 L. T. 113 487
Scaramanga *v.* Marquand, 53 L. T. 810; 5 Asp. M. C. 506—C. A. 270, 276, 283
"Schwalbe," Lush. 239; 14 Moo. P. C. 241; 4 L. T. 160 ..... 223, 230
——— Swab. 521 ..... 287, 290
"Schwan" (Thames Rules), 61 L. T. 308; 6 Asp. M. C. 409 ....542, 543
——— and "Albano," (1892) P. 419; 69 L. T. 34; 7 Asp. M. C. 347—C. A. 7, 8, 160, 225, 232
"Schwann" and "Robert Morrison," L. R. 4 A. & E. 187; 43 L. J. Ad. 18; 30 L. T. 537; 22 W. R. 743; 2 Asp. M. C. 259 308
"Scioto," Davis, 359 475

PAGE
"Scotia," 63 L. T. 324; 6 Asp. M. C. 541.....14, 107, 124, 474, 476, 484
——— 14 Wall. 170 .....5, 34, 319, 336, 413
Scott *v.* Cornell Steamboat Co., 59 Fed. Rep. 638..... 190
—— *v.* London & St. Katherine's Dock Co., 3 H. & C. 596 36
—— *v.* Scott, 2 Stark. 438..... 67
—— *v.* Seymour, 1 H. & C. 219 211
"Scout," L. R. 3 A. & E. 512; 41 L. J. Ad. 42; 26 L. T. 371; 20 W. R. 617; 1 Asp. M. C. 258 84
Scull *v.* Raymond, 18 Fed. Rep. 547..... 74
"Sea Gull," 23 Wall. 165 3
Sea Insurance Co. *v.* Haddan, 13 Q. B. D. 706; 53 L. J. Q. B. 252; 50 L. T. 657; 32 W. R. 841; 5 Asp. M. C. 230—C. A. 278
"Sea Nymph," Lush. 23 486
"Sea Nymph of Chester," Holt, 34..... 336
"Sea Queen" or "Lloyds," Br. & L. 359; 32 L. J. Ad. 197; 9 L. T. 236 257
"Sea Spray," (1907) P. 133; 96 L. T. 792; 76 L. J. P. 48 284
"Seacaucus," 34 Fed. Rep. 68 337
Seagars *c.* "Haddock," Seld. Ser. Admiralty, II. lxxxiii. 136
"Seaton," 9 P. D. 1; 53 L. J. Ad. 15; 49 L. T. 747; 32 W. R. 600; 6 Asp. M. C. 191 .....28, 327, 328, 388, 401, 404, 439
Seccombe *v.* Wood, 2 Moo. & Rob. 290 26
"Secret" (anchoring), 26 L. T. 670; 1 Asp. M. C. 318 .....9, 477, 480
Secretary of State for India *v.* Hewitt, 6 Asp. M. C. 384; 60 L. T. 334 286
Sedgworth *v.* Overend, 7 T. R. 279 97
"Seine," Swab. 411; 5 Jur. N. S. 298 .....65, 66, 205, 440
"Selina," 2 Not. of Cas. 18 79
"Senator D. C. Chase," 46 Fed. Rep. 874 36
"Seneca," 47 Fed. Rep. 87 34
"Seringapatam" (division of loss), 3 W. Rob. 38; 5 Not. of Cas. 61 ..123, 124, 128, 388
"Servia," "Carinthia," (1898) P. 36; 67 L. J. Ad. 36; 78 L. T. 54; 8 Asp. M. C. 353 253
——— 42 Dav. 144 .....322, 497
Seward *v.* Owners of "Vera Cruz." See "Vera Cruz" (No. 2).
"Seymolicus," (1909) P. 109; 100 L. T. 382; 78 L. J. P. 52; 11 Asp. M. C. 206 442
"Shannon," 1 W. Rob. 463; 7 Jur. 380 479
Sharp *v.* Powell, L. R. 7 C. P. 253; 41 L. J. C. P. 95; 26 L. T. 436; 20 W. R. 584..... 15
Sharpsburg Sands Co. *v.* Monongahela River Co., 145 Fed. Rep. 424 .. 474
Shaw, Savill & Albion Co. *v.* Timaru Harbour Board, 15 App. Cas. 429; 59 L. J. C. P. 77; 62 L. T. 913; 6 Asp. M. C. 521—P. C. 93, 239
Sherman *v.* Mott, 5 Bened. 372 12
Shersby *v.* Hibbert. See "Duke of Manchester."
Shields *v.* Mayor, 18 Fed. Rep. 748 364
"Shubert" *v.* "Einar," 45 Fed. Rep. 497..... 182
"Sicilian Prince," 128 Fed. Rep. 133 440
Sills *v.* Brown, 9 Car. & P. 601.....14, 292

PAGE

"Simla" and "City of Lucknow," Ad. Div. March, 1884 .....334, 364
Simpson *v.* Blues, "Madge Wildfire," L. R. 7 C. P. 290; 41 L. J. C. P. 121; 26 L. T. 697; 20 W. R. 680; 1 Asp. M. C. 326 297
——— *v.* Fogo, 1 H. & M. 195; 32 L. J. Ch. 249; 9 Jur. N. S. 403; 8 L. T. 61; 11 W. R. 418 212
——— *v.* Thompson, 3 App. Cas. 279; 38 L. T. 1; 3 Asp. M. C. 567—H. L. 64, 72, 98, 271, 272, 278, 279
"Singapore" and "Hebe," 4 Moo. P. C. N. S. 271; L. R. 1 P. C. 378 .....289, 387, 390, 394, 414
"Sinquasi," 5 P. D. 241; 50 L. J. Ad. 5; 43 L. T. 768; 4 Asp. M. C. 383 .....170—175, 177, 187, 194, 223, 228, 231, 232, 237
Sir John Jackson, Limtd. *v.* Owners of S.S. "Blanche." See "Steam Hopper, No. 66."
"Sir Robert Peel," 43 L. T. 364; 4 Asp. M. C. 321—C. A. 292
"Siren," 7 Wall. 152 94
"Sisters" (admitting liability), 32 L. T. 837; 2 Asp. M. C. 589 300
——— (damages; no collision; appeal), 1 P. D. 117; 45 L. J. Ad. 39; 34 L. T. 338; 24 W. R. 412; 3 Asp. M. C. 122—C. A. 3, 4, 8, 27, 29, 70, 76, 172, 299, 300
"Six Sisters," (1900) P. 302; 69 L. J. Ad. 139 533
"Skerryvore" (not reported) 543
"Skipsea," (1905) P. 32; 93 L. T. 181; 74 L. J. P. 34; 10 Asp. M. C. 91 545
Slaney *v.* Hopwood, Seld. Ser. Admiralty, II. lxxxiv 138
Slattery's Case. See Dublin, Wicklow, and Wexford Rail. Co. *v.* Slattery.
Slyfield *v.* Penfold, 66 Fed. Rep. 362 .....14, 28
Smith, *In re*, "City of Mecca," 1 P. D. 300; 45 L. J. Ad. 92; 35 L. T. 380; 24 W. R. 903; 3 Asp. M. C. 259—C. A. 199, 285
——— *v.* Bailey, (1891) 2 Q. B. 403 64
——— *v.* Baker, (1891) App. Cas. 325; 60 L. J. Q. B. 683; 65 L. T. 467; 40 W. R. 392 36
——— *v.* Brown, L. R. 6 Q. B. 729; 40 L. J. Q. B. 214; 24 L. T. 808; 19 W. R. 1165; 1 Asp. M. C. 56 297
Smith *v.* Condry, 1 How. 28 .....114, 217, 241
——— *v.* "Creole" and "Sampson," 2 Wall. Jun. C. C. R. 485 ..182, 241
——— *v.* Dobson, 3 M. & G. 59; 3 Scott, N. R. 336 .....28, 498
——— *v.* Kirby, 1 Q. B. D. 131; 24 W. R. 207 163
——— *v.* Nugent. See Nugent *v.* Smith.
——— *v.* Saint Lawrence Tow Boat Co., L. R. 5 P. C. 308; 28 L. T. 885; 21 W. R. 569, 2 Asp. M. C. 41 .....187, 192, 193, 380
——— *v.* Scott, 4 Taunt. 126 271
——— *v.* South Eastern Rail. Co., (1896) 1 Q. B. 178; 65 L. J. Q. B. 219; 73 L. T. 614; 44 W. R. 291 32
——— *v.* Steele, L. R. 10 Q. B. 125; 44 L. J. Q. B. 60; 32 L. T. 195; 25 W. R. 338; 2 Asp. M. C. 487 99
——— *v.* Voss, 2 H. & N. 97; 26 L. J. Ex. 233; 5 W. R. 534 ....62, 442
——— *v.* Wilson, (1895) App. Cas. 579; 65 L. J. C. P. 66; 75 L. T. 81; 8 Asp. M. C. 196 88
"Smyrna" and "Vrouw Maria" (not reported) 199

PAGE
"Smyrna," (mentioned Lush. 385) 340, 398
———— 2 Moo. P. C. N. S. 435; 10 Jur. N. S. 977; 11 L. T. 74; 2 Mar. Law Cas. O. S. 93 ..... 374, 490, 502, 503, 504
"Snark," (1900) P. 105; 69 L. J. Ad. 41; 82 L. T. 42; 9 Asp. M. C. 50 ..... 88, 89
Sneddall *v.* Leigh, Seld. Ser. Admiralty, II. lxxxiii. 136
Sneesby *v.* Lancashire and Yorkshire Rail. Co., L. R. 9 Q. B. 263 15
Snelling *v.* Pulling, 29 Ch. D. 85; 52 L. T. 335; 33 W. R. 449 312
"Solis," 10 P. D. 62; 54 L. J. Ad. 52; 52 L. T. 440; 33 W. R. 659; 5 Asp. M. C. 368 286
"Solway," 10 P. D. 137; 54 L. J. Ad. 83; 53 L. T. 680; 34 W. R. 232; 5 Asp. M. C. 482 290
"Somerset," Ship. Gaz., May 25th, 1909 308
"Sontag," 40 Fed. Rep. 174 496
"South Sea," Swab. 141 108
Spaight *v.* Tedcastle, 6 App. Cas. 217; 44 L. T. 589; 29 W. R. 761; 4 Asp. M. C. 406 ..... 15, 20, 21, 24, 86, 132, 187, 192, 222—232
"Spearman." See "Yourri" and "Spearman."
Speller *v.* Bristol Steam Navigation Co., 13 Q. B. D. 96; 53 L. J. Q. B. 322; 50 L. T. 419; 32 W. R. 670; 5 Asp. M. C. 228—C. A. 298
"Spiegel," 84 Fed. Rep. 1002 456
"Spindrift." See "Jennie S. Barker."
"Spirit of the Ocean," Br. & Lush. 356; 34 L. J. Ad. 74; 12 L. T. 239; 2 Mar. Law Cas. O. S. 192 ..... 157, 158
"Sprightly" and "Wells." See Hay *v.* Le Neve.
"Spring," L. R. 1 A. & E. 99; 12 Jur. N. S. 788 ..... 387, 393
Stacpoole *v.* Betridge, 5 Victoria L. R. 302; 14 W. R. 975 63
"Stadacona," 5 Not. of Cas. 371 330
"Staffordshire," 8 Moo. P. C. N. S. 443; L. R. 4 P. C. 194; 27 L. T. 46; 20 W. R. 557; 1 Asp. M. C. 365—P. C. 80
"Stakesby," 15 P. D. 166; 59 L. J. Ad. 72; 63 L. T. 115; 39 W. R. 80; 6 Asp. M. C. 532 359
"Stanmore," 10 P. D. 134; 54 L. J. Ad. 89; 53 L. T. 10; 5 Asp. M. C. 441—C. A. 323, 325, 427
"Star of India," 1 P. D. 466; 45 L. J. Ad. 102; 35 L. T. 407; 25 W. R. 377; 3 Asp. M. C. 261 ..... 101, 111, 112
"Star of New Zealand," Ship. Gaz., Nov. 7th, 1899 378
"State of Alabama," 17 Fed. Rep. 847 375
"State of Texas," 20 Fed. Rep. 254 330
"Steam Hopper No. 66," (1907) P. 254; 97 L. T. 360; 76 L. J. P. 110; on app., (1908) A. C. 126; 98 L. T. 464; 77 L. J. P. 84; 11 Asp. M. C. 37 157
Steel *v.* Lester, 3 C. P. D. 121; 47 L. J. C. P. 43; 37 L. T. 642; 26 W. R. 212; 3 Asp. M. C. 537 ..... 69, 164
"Stella," (1900) P. 162; 69 L. J. Ad. 70; 82 L. T. 390—C. A.; 9 Asp. M. C. 66 164
"Stephen Bennett," 54 Fed. Rep. 207 439
"Stephen Morgan," 4 Otto, 599 416
"Sterling" and "Equator," 16 Otto, 647 ..... 127, 182

PAGE

"Stettin," Br. & Lush. 199; 31 L. J. Ad. 208; 6 L. T. 613—P. C. .. 244, 257
Stevens *v.* Trehawke, Seld. Ser. Admiralty, II. lxxxiii. 136
Stewart *v.* Steele, 5 Scott, N. R. 927..... 276
"Stirlingshire" and "Africa," 2 Mar. Law Cas. O. S. Dig. 672..... 487
Stoomvaart Maatschappy Nederland *v.* Peninsular and Oriental Steam Navigation Co. See "Voorwaarts" and "Khedive."
"Stork" and "Never Despair." See "Never Despair."
"Stormcock," 53 L. T. 53; 5 Asp. M. C. 470 177
Stort *v.* Clements, 1 Peake, 107 .....62, 94, 214
Straker *v.* Hartland, 2 H. & N. 570; 5 N. R. 163; 34 L. J. Ch. 122; 10 Jur. N. S. 1143; 11 L. T. 622 163
"Stranger," 6 Not. of Cas. 36 471
——— ——— Brown, Ad. 281.....187, 189, 190
"Strathay," 27 Fed. Rep. 562 184
"Strathnaver," 1 App. Cas. 58; 34 L. T. 148; 3 Asp. M. C. 113—P. C. 298, 307
Stretch *v.* "Margaret," 2 Fed. Rep. 255..... 186
Stuart *v.* Isemonger. See "Diana."
Sturgis *v.* Boyer, 24 How. 110.....174, 181
——— *v.* Clough, 21 How. 451 495
Submarine Telegraph Co. *v.* Dickson, 15 C. B. N. S. 759; 33 L. J. C. P. 139; 10 Jur. N. S. 129; 10 L. T. 32; 12 W. R. 384 202
Summers *v.* "Oneida," 84 Fed. Rep. 716 107
"Sunlight," (1904) P. 100; 90 L. T. 32; 73 L. J. P. 25; 9 Asp. M. C. 509.....404, 497
"Sunnyside," 1 Otto, 208 .....60, 330, 333, 404, 413, 456, 457, 475
"Superb" and "Florence Bragington." See "Florence Bragington."
"Superior," 6 Not. of Cas. 607 .....453, 456
"Supply, H.M.S.," 12 L. T. 799; 2 Mar. Law Cas. O. S. 262..... 366
"Sussex," (1904) P. 236; 90 L. T. 549; 73 L. J. P. 73; 9 Asp. M. C. 578 .....57, 253
"Sutherland," 12 P. D. 154; 56 L. J. Ad. 94; 57 L. T. 631; 36 W. R. 13; 6 Asp. M. C. 181 257
"Sutlej," (1905) T. L. R. 325 459
Sutton *v.* Mitchell, 1 T. R. 18 149
——— *v.* Sutton, 22 Ch. D. 511; 52 L. J. Ch. 333; 48 L. T. 95; 31 W. R. 369 122
"Swallow, H.M.S.," Swab. 39 .....289, 307
——— ——— 36 L. T. 331; 3 Asp. M. C. 371—C. A.....10, 498
"Swan," 3 Blatchf. 285 90
"Swanland," 2 Sp. 107.....18, 38, 40, 292
"Swansea" and "Condor," 4 P. D. 115; 48 L. J. Ad. 33; 40 L. T. 442; 27 W. R. 748; 4 Asp. M. C 115– C. A.....55, 280, 310
"Sweepstakes," Brown, Ad. 509 188
"Swift" (oysters), (1901) P. 168; 70 L. J. Ad. 47; 85 L. T. 346; 9 Asp. M. C. 244 .....77, 304
Swyre *v.* Church, Seld. Ser. Admiralty, II. lxxxiv. 138
"Sylph" (custom), 2 Sp. 75 .....289, 324, 331, 336, 440
——— (altering course), Swab. 233 328

PAGE

"Sylph" (personal injury), L. R. 2 A. & E. 24; 37 L. J. Ad. 14; 17 L. T. 519 ..... 296, 297
"Sylvester Hale," 6 Bened. 523 320
"Syracuse." 9 Wall. 672 ..... 167, 432
———— 12 Wall. 167 ..... 189, 331
———— (damages), 18 Fed. Rep. 828 ..... 108, 109

T.

"T. C.," *In re*, Ir. Rep. 11 Eq. 151 79
"Tactician," (1907) P. 244; 97 L. T. 621; 76 L. J. P. 80; 10 Asp. M. C. 534 ..... 228, 237
"Talabot," 15 P. D. 194; 63 L. T. 812; 6 Asp. M. C. 602 447
"Talbot," (1891) P. 184; 64 L. T. 542; 7 Asp. M. C. 36 ..... 43, 45, 55, 336, 490
"Tasmania," No. 1 (lien), 13 P. D. 110; 57 L. J. Ad. 49; 59 L. T. 263; 6 Asp. M. C. 305 ..... 60, 67, 81, 83, 84, 179, 194
———— No. 2 (Art. 27), 15 App. Cas. 223; 63 L. T. 1; 6 Asp. M. C. 517—H. L. 5, 288, 458
Taylor *v.* Burger, 8 Asp. M. C. 364 497
——— *v.* Carryl, 20 How. 583 73
——— *v.* Dewar, 5 B. & S. 58; 33 L. J. Q. B. 141; 10 Jur. N. S. 361; 10 L. T. 267; 12 W. R. 579 ..... 97, 273, 276, 278, 297
"Tecla Carmen." See "North American" and "Tecla Carmen."
"Telegraph," Valentine *v.* Cleugh, 8 Moo. P. C. 167; 1 Sp. 427 ..... 30, 40, 305
"Temiscouata," 2 Sp. 208; 1 Jur. N. S. 479 ..... 80, 297
"Temora," Lush. 17; 1 L. T. 418 ..... 243, 244, 256
Tennant & Co. *v.* Ellis & Co., 6 Q. B. D. 46; 50 L. J. Q. B. 143; 43 L. T. 506; 29 W. R. 121 312
"Tergeste," (1903) P. 26; 72 L. J. Ad. 18; 87 L. T. 567; 9 Asp. M. C. 356 78
"Test," 5 Not. of Cas. 276 ..... 327, 412, 453, 460, 463
"Teutonia," 23 Wall. 77 378
"Thames." See "Sisters."
———— 5 C. Rob. 345 494
———— (inevitable accident), 32 L. T. 343; 2 Asp. M. C. 512 ..... 8, 37
———— and "Lutetia," Maclaren *v.* Compagnie Française de Navigation à Vapeur, 9 App. Cas. 640 ..... 318, 427, 430
"Theodore H. Rand," 12 App. Cas. 247; 56 L. J. Ad. 65; 56 L. T. 343; 35 W. R. 781; 6 Asp. M. C. 122—H. L. 322, 421, 429
"Theta," (1894) P. 280; 63 L. J. Ad. 160; 71 L. T. 25; 43 W. R. 160; 6 R. 712; 7 Asp. M. C. 480 114
"Thetford," 57 L. T. 455; 6 Asp. M. C. 179 ..... 529, 545
"Thetis," L. R. 2 A. & E. 365; 38 L. J. Ad. 42; 22 L. T. 276; 3 Mar. Law Cas. O. S. 357 ..... 12, 65, 195
——— Ship. Gaz., June 23rd, 1906; March 15th, 1907 473
"Thomas Joliffe." See "Avon" and "Thomas Joliffe."

PAGE

"Thomas Lea," 35 L. T. 406; 3 Asp. M. C. 260 335
"Thomas Martin," 3 Blatchf. 517 381
"Thomas P. Wray," 28 Fed. Rep. 526 107
"Thomas Powell" and "Cuba," 14 L. T. 603; 2 Mar. Law Cas. O. S. 344 ..... 2, 7
Thompson *v.* Hopper, El. Bl. & El. 1038; 27 L. J. Q. B. 441; 6 W. R. 857—Ex. Ch. 275
——— *v.* Reynolds, 7 E. & B. 172; 26 L. J. Q. B. 93; 23 Jur. N. S. 464 ..... 274, 276
Thomson *v.* South Eastern Rail. Co., 9 Q. B. D. 320; 51 L. J. Q. B. 322; 46 L. T. 513; 30 W. R. 537 293
"Thornley," 7 Jur. 659 ..... 10, 306, 494
"Thornton," 2 Bened. 429 ..... 483, 485
Thornton *v.* Boland, 2 Bing. 219; 9 Moore, 403 245
Thorogood *v.* Bryan, 8 C. B. 115; 18 L. J. C. P. 336 ..... 60, 96, 98, 99
Thorp *v.* Hammond, 12 Wall. 408 ..... 86, 475, 488
Thredgold *v.* Gosling, Seld. Ser. Admiralty, II. lxxxiii. 136
"Three Relations" and "Britannia," Faye *v.* Granam, Marsd. Ad. Cas. 331 142
"Thuringia," 41 L. J. Ad. 44; 26 L. T. 446; 1 Asp. M. C. 283 ..... 105, 106, 206
"Thyatira," 8 P. D. 115; 52 L. J. Ad. 85; 49 L. T. 406; 32 W. R. 276; 5 Asp. M. C. 147 110
"Ticonderoga," Swab. 215 ..... 71, 83, 87, 170
Tills *v.* "Mary," Marsd. Ad. Cas. 284 89
Tindall *v.* Bell, 11 M. & W. 228; 12 L. J. Ex. 160 110
"Tirzah," 4 P. D. 33; 48 L. J. Ad. 15; 39 L. T. 547; 27 W. R. 584; 4 Asp. M. C. 55 ..... 341, 343, 349
"Titan," 23 Fed. Rep. 413 ..... 18, 99, 337
"Titan" and "Rambler," 96 L. T. 93; 10 Asp. M. C. 350 ..... 1, 362, 369, 545
"Tolka," Ad. Div. 14 Dec. 1886 363
"Topaze, H.M.S.," 10 L. T. 659; 12 W. R. 923; 2 Mar. Law Cas. O. S. 38 ..... 331, 336
"Toward" and "Turkistan," 13 Ct. of Sess. Cas. 4th Ser. 342 93
——— (not reported) 105
Traders' North Staffordshire Carrying Co., *In re*, L. R. 19 Eq. 60 79
"Transfer" (No. 2), 56 Fed. Rep. 313 11
"Transit," 3 Bened. 192 ..... 391, 414
"Trave," 68 Fed. Rep. 390 ..... 44, 51, 376, 451
"Tredeberg," (1885) 10 P. D. 112 309
Trew *v.* Peirce, "Mary of Poole" and "Mary of Weymouth," Marsd. Ad. Cas. 264 ..... 123, 139
"Trident," 1 Sp. 217 ..... 330, 491
"Triune," 3 Hag. 114 ..... 63, 151, 158
"Troy," 28 Fed. Rep. 861 185
Trufort, Re, Trafford *v.* Blanc, 36 Ch. D. 600; 36 W. R. 163 212
"Try Again," Ship. Gaz., June 2nd, 1908 ..... 442, 443
Tryon *v.* National Provident Institution, 16 Q. B. D. 678; 55 L. J. Q. B. 236; 54 L. T. 167; 34 W. R. 398 98
"Tryst," (1909) P. 333 57

PAGE

Tuff *v.* Warman, 2 C. B. N. S. 740; 26 L. J. C. P. 263; 5 W. R. 685; on app. 5 C. B. N. S. 573; 5 Jur. N. S. 222; 27 L. J. C. P. 322; 6 W. R. 693—Ex. Ch. 14, 19, 20, 21, 40, 41
"Turquoise," (1908) P. 148; 98 L. T. 588; 77 L. J. P. 97; 11 Asp. M. C. 28 ..... 362, 364
"Turret Court," 69 L. J. Ad. 117; 84 L. T. 331; 9 Asp. M. C. 162 .. 313
"Tweedsdale," 14 P. D. 164; 58 L. J. Ad. 41; 61 L. T. 371; 37 W. R. 783; 6 Asp. M. C. 430 ..... 358, 407, 408, 430, 450, 463
"Twenty-one Friends," 33 Fed. Rep. 190 7
"Two Ellens," Johnson *v.* Black, 3 Moo. P. C. N. S. 298; L. R. 4 P. C. 161; 41 L. J. Ad. 33; 25 L. T. 1; 20 W. R. 592; 1 Asp. M. C. 208 ..... 73, 74, 76, 84
"Two Sisters," 1 Pritch. Ad. Dig. (ed. 1887) 248 30
Twyneham *v.* Harman, Marsd. Ad. Cas. 130 199
Tyne Improvement Commissioners *v.* General Steam Nav. Co., L. R. 2 Q. B. 65; 5 B. & S. 66; 36 L. J. Q. B. 22; 15 L. T. 487; 15 W. R. 178—Ex. Ch. 217, 243, 259

U.

Ueberweg *v.* La Compagnie Générale Transatlantique, 60 Fed. Rep. 461 439
"Uhla," L. R. 2 A. & E. 29 (note); 37 L. J. Ad. 16 (note); 19 L. T. 89; 3 Mar. Law Cas. O. S. 148 ..... 485, 493
"Ulster" (coming out of dock), 1 Moo P. C. N. S. 31; 6 L. T. 736; 1 Mar. Law Cas. O. S. 234 ..... 471, 497
——— (appeal), 1 Moo. P. C. N. S. 31; 10 W. R. 794 312
"Umbilo," (1891) P. 118; 60 L. J. Ad. 7; 64 L. T. 328; 39 W. R. 336; 7 Asp. M. C. 26 156
"Umbria," 166 U. S. Rep. 404 ..... 102, 328, 376, 380
"Undaunted," 11 P. D. 46; 55 L. J. Ad. 24; 54 L. T. 542; 34 W. R. 686; 5 Asp. M. C. 580 188
"Underwriter." See "Lake St. Clair" and "Underwriter."
"Undine," 2 Pritch. Ad. Dig. 1761 113
"Union," Lush. 128; 30 L. J. Ad. 17; 3 L. T. 280 ..... 79, 204
Union Marine Ins. Co. *v.* Borwick, (1895) 2 Q. B. 279; 64 L. J. Q. B. 679; 73 L. T. 156; 8 Asp. M. C. 71 271
Union Steamship Co. *v.* Owners of "Aracan." See "American" and "Syria."
"United Service," 8 P. D. 56; 5 Asp. M. C. 55; 52 L. J. Ad. 18; 48 L. T. 486; 31 W. R. 614; on app. 9 P. D. 3; 53 L. J. Ad. 1; 32 W. R. 565; 5 Asp. M. C. 170; 49 L. T. 701 ..... 188, 195, 502
"United States," 12 L. T. 33—P. C. 19, 125, 500
——— ——— ——— *v.* St. Louis & Mississippi Valley Transportation Co., 184 U. S. Rep. 247 31
"Unity," Swab. 101 ..... 314, 331, 440, 442
"Upton Castle," (1906) P. 147; 93 L. T. 811; 75 L. J. P. 77; 10 Asp. M. C. 153 ..... 357, 358, 407

PAGE

"Urania," 5 L. T. 402; 10 W. R. 97; 1 Mar. Law Cas. O. S. 156.... 295
"Uranus," Ship. Gaz., March 30th and 31st, 1909—Ad. Ct. 226
Usher *v.* Lyon, 2 Price, 118 252
"Uskmoor," (1902) P. 250; 71 L. J. Ad. 103; 87 L. T. 55; 51 W. R. 93; 9 Asp. M. C. 316 469
"Utopia," (1893) App. Cas. 492; 62 L. J. P. C. 118; 70 L. T. 47; 1 R. 394; 7 Asp. M. C. 408—P. C. 82, 88, 310

V.

Vadala *v.* Lawes, 25 Q. B. D. 310; 62 L. T. 701; 63 *ibid.* 128; 38 W. R. 594 212
"Valleyo," Ad. Div. 27th April, 1887 58
Van Eijck *v.* Somerville, (1906) A. C. 489; 10 Asp. M. C. 263 166
"Vanderbilt," 6 Wall. 225 .....330, 445
Vanderplank *v.* Miller, M. & M. 169 472
"Vandyk," 7 P. D. 42; on app. 47 L. T. 694; 5 Asp. M. C. 17..... 282
"Velasquez," Owners of "Velasquez" *v.* Briggs, 4 Moo. P. C. N. S. 426; L. R. 1 P. C. 494; 36 L. J. Ad. 19; 16 L. T. 777; 16 W. R. 89 .....224, 232
"Velocity," 6 Moo. P. C. N. S. 263; L. R. 3 P. C. 44; 39 L. J. Ad. 20; 21 L. T. 686; 18 W. R. 264 .....292, 317, 327, 331, 400, 402, 411, 445, 446
Velthasen *v.* Ormsby, 3 T. R. 315..... 199
Vennall *v.* Garner, 1 Car. & M. 21; 3 Tyr. 85 4
"Vera Cruz," No. 1 (infringement of regulations), 9 P. D. 88; 53 L. J. Ad. 33; 51 L. T. 24; 32 W. R. 783; 5 Asp. M. C. 254....20, 43, 45, 55, 59, 61, 123, 132, 206, 305
——————No. 2 (jurisdiction *in rem*), 9 P. D. 96; 53 L. J. Ad. 33; 51 L. T. 104; 5 Asp. M. C. 270; (H. L.) nom. Seward *v.* "Vera Cruz," 10 App. Cas. 59; 54 L. J. Ad. 9; 52 L. T. 474; 33 W. R. 477; 5 Asp. M. C. 386 ..... 21, 76, 114, 204, 210, 211, 297
Verduen *v.* March (not reported) 136
"Veritas," (1901) P. 304; 70 L. J. Ad. 75; 85 L. T. 136; 9 Asp. M. C. 237 ..... 77, 78, 281, 304
"Vernon," 1 W. Rob. 316 .....207, 224
"Vesper," 9 Fed. Rep. 569 .....376, 381
"Vesta" (pilot), 7 P. D. 240; 51 L. J. Ad. 25; 46 L. T. 492; 30 W. R. 705; 4 Asp. M. C. 515 .....256, 259
"Vesuvius" and "Savernake." See "Savernake."
"Vianna," Swab. 405..... 498
"Vicksburg," 7 Blatchf. 216..... 488
"Victor," Lush. 72; 29 L. J. Ad. 110; 2 L. T. 331 .....75, 80, 297, 298
"Victor Covacevitch," 10 P. D. 40; 54 L. J. Ad. 48; 52 L. T. 632; 5 Asp. M. C. 417 292
"Victoria" (lights), 3 W. Rob. 49 .....334, 336, 380, 382, 384
—————— (pilot), Ir. Rep. Ad. 1 Eq. 336 .....245, 261

PAGE

"Victoria," No. 1 (damage to cargo), 12 P. D. 105; 56 L. J. Ad. 75; 56 L. T. 499; 35 W. R. 291; 6 Asp. M. C. 120 76
———— No. 2 (life claimants), 13 P. D. 125; 57 L. J. Ad. 103; 59 L. T. 728; 37 W. R. 62; 6 Asp. M. C. 335 166
"Victoria" and "Keilawarra." See Australian, &c. Co. *v.* Smith.
Victorian Railway Commissioners *v.* Coultas, 13 App. Cas. 222; 57 L. J. P. C. 69; 58 L. T. 390; 37 W. R. 129 100
"Victory" and "Plymothian," 168 U. S. Rep. 410 .....131, 403
"Vildosala," 42 L. T. 96; 4 Asp. M. C. 228 294
"Ville du Havre," 7 Bened. 328 474
"Vindomora," 14 P. D. 172; 59 L. J. Ad. 8; 61 L. T. 655; 38 W. R. 69; 6 Asp. M. C. 438; affd. (1891) App. Cas. 1; 60 L. J. Ad. 1; 63 L. T. 749; 6 Asp. M. C. 569 .....328, 380
"Viola," 59 Fed. Rep. 632 .....42, 471
Violet *v.* Blague, Cro. Jac. 514 199
"Virgil," 2 W. Rob. 201.....7, 288
"Virginia Ehrman," 7 Otto, 309 .....182, 269
"Virgo," 35 L. T. 519; 25 W. R. 397; 3 Asp. M. C. 285 .....9, 25
———— 7 Bened. 495..... 417
"Vivar," 2 P. D. 29; 35 L. T. 782; 25 W. R. 453; 3 Asp. M. C. 308—C. A. 199, 285
"Vivid" (speed), Swab. 88; on app. nom. Churchward *v.* Palmer, 10 Moo. P. C. 472; 4 W. R. 755—P. C.....40, 377
———— (keep her course), 7 Not. of Cas. 127 .....383, 412, 419
———— (foul berth), 42 L. J. Ad. 57; 28 L. T. 375; 1 Asp. M. C. 601 .....478, 479, 483
Vognel *c.* Tomlinson, Marsd. Ad. Cas. 314..... ...75, 146
"Volant" (part-owner; liability), 1 W. Rob. 383; 1 Not. of Cas. 503.....80, 146, 158, 200, 297
———— (arrest; damages), Br. & L. 321 298
"Volcano," 2 W. Rob. 337 .....94, 479, 481
"Voorwaarts" and "Khedive," Stoomvaart, &c. Co. *v.* Peninsular, &c. Co. (infringement of regulations), 5 App. Cas. 876; 52 L. J. Ad. 1; 43 L. T. 610; 29 W. R. 173; 4 Asp. M. C. 360—H. L. ...3, 41, 42, 45—59, 317, 318, 321—324, 421, 422—431, 452—454, 462, 465, 477
"Voorwaarts" and "Khedive," Stoomvaart, &c. Co. *v.* Peninsular, &c. Co. (division of loss), 7 App. Cas. 795; 52 L. J. Ad. 1; 47 L. T. 198; 31 W. R. 249; 4 Asp. M. C. 567—H. L.....17, 61, 68, 87, 121, 123, 124, 127, 129, 130, 132, 146, 165, 206, 275
"Vortigern," Swab. 518; 1 L. T. 307 286
"Vrow Janetze," Ad. Ct. 2nd Feb. 1820 145

W.

"W. A. Levering," 36 Fed. Rep. 511 .....191, 337
"W. A. Scholten," 13 P. D. 8; 57 L. J. Ad. 4; 58 L. T. 91; 36 W. R. 559; 6 Asp. M. C. 244..... 285
"W. C. Redfield," 4 Bened. 227 .....405, 489

PAGE

"W. H. Gratwick," 81 Fed. Rep. 590 182
"W. J. Keyser," 56 Fed. Rep. 731 190
Wahlberg *v.* Young, 45 L. J. C. P. 783; 24 W. R. 846; 4 Asp. M. C. 27 ..... 162, 195, 299
Waite *v.* North Eastern Ry. Co., E. B. & E. 719 99
Wakelin *v.* London and South Western Ry. Co., 12 App. Cas. 41; 56 L. J. Q. B. 229; 55 L. T. 709; 35 W. R. 144 ..... 21, 29, 32
Walker *v.* Maitland, 5 B. & A. 171 ..... 272, 275
"Wallace," 41 Fed. Rep. 894 482
Walsh *v.* Brooklyn and New York Ferry Co., 68 Fed. Rep. 507 ..... 322, 412, 497
"Walter D. Wallet," (1893) P. 202; 62 L. J. Ad. 88; 69 L. T. 771; 7 Asp. M. C. 398 298
Waltham *v.* Mulgar, Moo. 776 65
"Wanata," 4 Bened. 310; 5 Otto, 600 163
"Wanderer," 20 Fed. Rep. 140 132
"Wansfell," 1 Sp. 269 40
"Warkworth," 9 P. D. 20; 53 L. J. Ad. 4; 32 W. R. 479; 49 L. T. 715; 5 Asp. M. C. 194; on app. 9 P. D. 145; 53 L. J. Ad. 65; 33 W. R. 112; 51 L. T. 558; 33 W. R. 112; 5 Asp. M. C. 326—C. A. ... 9, 25, 151, 157, 161, 228, 300, 311
"Warrior," L. R. 3 A. & E. 553; 27 L. T. 101; 21 W. R. 82; 1 Asp. M. C. 400 ..... 335, 406, 464
"Warsaw," (1898) P. 127; 67 L. J. Ad. 50; 78 L. T. 327; 46 W. R. 638; 8 Asp. M. C. 399 ..... 244, 256, 259
"Warwick," 15 P. D. 189; 63 L. T. 561; 7 Asp. M. C. 545 358
"Washington," 5 Jur. 1067 ..... 123, 305
"Wasp," L. R. 1 A. & E. 367; 16 L. T. 854; 2 Mar. Law Cas. O. S. 552 80
"Waterloo," 2 Dods. Ad. 433 84
Wayde *v.* Lady Carr, 2 Dow. & R. 255 445
"Webb," 14 Wall. 406 ..... 182, 187, 197
Webster *v.* Disharoon, 64 Fed. Rep. 143 69
——— *v.* Manchester, Shetfield, &c. Ry. Co., 5 Asp. M. C. 256, n. ... 286
"Wega," (1895) P. 156; 64 L. J. Ad. 68; 72 L. T. 332; 7 Asp. M. C. 597 ..... 537, 540
Wells *v.* Armstrong, 29 Fed. Rep. 216 33
——— *v.* Osman, 2 Raym. 1044; 6 Mod. 238 84
"Wenona," 19 Wall. 41 326
"Wesley," Lush. 268 ..... 256, 257
"Western Belle," 95 L. T. 364; 10 Asp. M. C. 279 ..... 474, 476
"Westernland," 24 Fed. Rep. 703 ..... 22, 500
"Westhall," 153 Fed. Rep. 1010 330
"Westphalia," 4 Bened. 404; 24 L. T. 75; 1 Asp. M. C. 12 381
"Wexford," 13 P. D. 10; 57 L. J. Ad. 6; 58 L. T. 28; 36 W. R. 560; 6 Asp. M. C. 241 106
Wharton *v.* Pitts, 1 Salk. 548 199
"Wheatsheaf" and "Intrepide," 13 L. T. 612; 2 Mar. Law Cas. O. S. 292 ..... 27, 435
White *v.* Crisp, 10 Ex. 312 ..... 26, 88

PAGE
White *v.* Dobinson, 14 Sim. 373 276
——— *v.* Phillips, 15 C. B. N. S. 245; 33 L. J. C. P. 33; 10 Jur. N. S. 425; 9 L. T. 388 88
White *v.* Walker, Seld. Ser. Adm. H. lxxxiv. 137
"Whiteash," and "Winnie," 64 Fed. Rep. 893 ..... 412, 462
"Whitlieburn," 83 L. T. 748; 9 Asp. M. C. 154 ..... 441, 444
"Whitney," 77 Fed. Rep. 1001 371
Whitridge *v.* Dill, 23 How. 448 ..... 436, 475
"Why Not," L. R. 2 A. & E. 265; 38 L. J. Ad. 26; 18 L. T. 861 288
"Wild Ranger," Lush. 553; 32 L. J. Ad. 49; 9 Jur. N. S. 134; 7 L. T. 725; 11 W. R. 255 ..... 146, 207
Wildman *v.* Blakes. See "Petersfield" and "Judith Randolph."
"Wilhelmina." See "Williamina."
Wilkins *v.* Day, 12 Q. B. D. 110; 49 L. T. 399; 32 W. R. 123 31
Wilkinson *v.* Clarke (not reported) 136
"Willamette," 70 Fed. Rep. 874 17
"Willard Saulsbury," 1 Pars. on Ship. (ed. 1869) 564 361
"Willem III.," L. R. 3 A. & E. 487; 25 L. T. 386; 20 W. R. 216; 1 Asp. M. C. 129 75
"William," 4 Quebec L. R. 306 ..... 170, 182
"William Cox," 9 Fed. Rep. 672 190
"William Hutt," Lush. 25 ..... 290, 293, 294
"William Kraft," 33 Fed. Rep. 847 ..... 190, 193
"William Lindsay," L. R. 5 P. C. 338; 29 L. T. 355; 22 W. R. 6; 2 Asp. M. C. 118 ..... 9, 25, 93, 481
"William Money," 2 Hag. 136 81
"William Murtaugh," 3 Fed. Rep. 404 190
"William W. Wood," 66 Fed. Rep. 601 179
"Williamina," 3 P. D. 97 110
Williams *v.* Marten, Seld. Ser. Adm. H. lxxxiv. 128
——— *v.* Newton, 14 M. & W. 747; 15 L. J. Ex. 11 256
Willoughby *v.* Horridge, 12 C. B. 742 97
Wilsey *v.* "Celestial Empire," 2 Fed. Rep. 651 186
Wilson *v.* Currie, "Otto" and "Thorsa," (1894) App. Cas. 116—H. L. 51, 325, 398, 427
——— *v.* Dickson, 2 B. & Ald. 2 ..... 146, 150, 158
——— *v.* Merry, L. R. 1 Sc. Ap. 326 99
——— *v.* Newport Dock Co., L. R. 1 Ex. 177 ..... 104, 114
Wilson Sons *v.* Owners of Cargo *ex* "Xantho," 12 App. Cas. 503; 56 L. J. Ad. 116; 57 L. T. 701; 36 W. R. 353; 6 Asp. M. C. 9, 207—H. L. 266, 267
Windham and others *v.* Robertson, 42 Sc. Law Rep. 602 430
"Winestead," (1895) P. 170; 11 R. 59; 64 L. J. Ad. 51; 72 L. T. 91; 7 Asp. M. C. 547 ..... 255, 257
"Winkfield," (1902) P. 42; 71 L. J. Ad. 21; 85 L. T. 668; 49 W. R. 685; 9 Asp. M. C. 259—C. A. 97, 166
"Winooski," 162 Fed. Rep. 64 376
"Winstanley," (1896) P. 297; 65 L. J. Ad. 121; 74 L. T. 432; affd. 75 L. T. 133; 8 Asp. M. C. 170 ..... 12, 403, 504

PAGE

"Winston," 8 P. D. 176; 52 L. J. Ad. 72; 49 L. T. 403; 31 W. R. 892; 5 Asp. M. C. 143; on app. 9 P. D. 85; 53 L. J. Ad. 69; 51 L. T. 183; 5 Asp. M. C. 274—C. A. 223, 225, 230, 245, 246, 308
"Wirrall," 3 W. Rob. 56 472
"Wisconsin," 23 Fed. Rep. 283.....353, 365
Witheofsky *v.* Wier, 32 Fed. Rep. 301..... 74
"Woburn Abbey," 38 L. J. Ad. 28; 20 L. T. 621; 3 Mar. Law Cas. O. S. 240 .....220, 482
Wood *v.* Smith. See "City of Cambridge."
"Woodford," Ship. Gaz., March 10th & 11th, 1905..... 9
Woodley *v.* Michell, 11 Q. B. D. 47; 52 L. J. Q. B. 325; 48 L. T. 599; 31 W. R. 651; 5 Asp. M. C. 71—C. A. 266, 267, 269
"Woodrop Sims," 2 Dods. Ad. 83 .....117, 124, 142
Wordsworth *v.* Willan, 4 Esp. 273 445
Workman *v.* Mayor, &c. New York, 179 U. S. Rep. 552..... 86
Worth *v.* Steam Tug "William Murtagh," 6 Fed. Rep. 192 90
"Wrestler," 144 Fed. Rep. 334; 153 Fed. Rep. 973 442
Wright *v.* Lethbridge, 63 L. T. 572; 6 Asp. M. C. 558—C. A. 91, 94
"Wyanoke," 40 Fed. Rep. 702..... 382

X.

"Xantho." See Wilson Sons *v.* Owners of Cargo *ex* "Xantho."
Xenos *v.* Fox, L. R. 4 C. P. 665; 38 L. J. C. P. 351; 19 L. T. 84; 17 W. R. 893—Ex. Ch. 273

Y.

Yates *v.* Hall, 1 T. R. 73 149
—— *v.* Whyte, 4 Bing. N. C. 272; 2 Scott, 640; 7 L. J. C. P. 116.. 115, 276, 278
Yaxley *v.* Delavall, Seld. Ser. Admiralty, II. lxxxiv. 138
"Ydun," (1899) P. 236; 68 L. J. Ad. 101; 81 L. T. 10; 8 Asp. M. C. 551—C. A. 93
"Yeager," 20 Fed. Rep. 653..... 278
"Yorkshireman," 2 Hag. Ad. 30 (note) 110
"Young America" (damages), 54 Fed. Rep. 410 .....108, 110
———————— (tug and tow), 25 Fed. Rep. 207 .....184, 189
———————— (tug and tow), 26 Fed. Rep. 174 ....110, 131, 184, 190
"Young Mechanic," 2 Curtis, 404 74
"Yourri" and "Spearman," 10 App. Cas. 276; 53 L. T. 29; 5 Asp. M. C. 458—P. C. 441, 501

Z.

PAGE

"Zadok," 9 P. D. 114; 53 L. J. Ad. 72; 32 W. R. 1003; 50 L. T. 695; 5 Asp. M. C. 252 .....35, 36, 374, 375, 382, 383, 409, 457, 471

"Zanzibar," (1892) P. 233; 61 L. J. Ad. 81; 68 L. T. 297; 40 W. R. 702; 7 Asp. M. C. 258 154

"Zephyr," 11 L. T. 351; 2 Mar. Law Cas. O. S. 146 .....296, 297

"Zeta." See Mersey Docks and Harbour Board *v.* Turner.

"Zoe," 11 P. D. 72; 55 L. J. Ad. 52; 54 L. T. 879; 35 W. R. 61; 5 Asp. M. C. 583 .....164, 166

"Zollverein," Swab. 96; 2 Jur. N. S. 429 .....205, 206, 493

THE LAW

OF

COLLISIONS AT SEA.

CHAPTER I.

NEGLIGENCE.

Collision without negligence creates no liability.

The mere fact that a ship strikes or goes foul of and injures another creates no liability in herself, her owners, or those in charge of her. The assertion that one ship "ran down"—in the language of the old cases "stemmed"—the other, is a mere allegation of negligence, and in no way advances the case (*a*). Thus where a tug was lawfully lying alongside a pontoon, and was run into by another vessel, and driven against the pontoon, it was held that no action would lie by the owners of the pontoon against the tug (*b*). In order that damages may be recovered, negligence for which the owners or persons in charge of the ship sued are responsible must be proved. There is but one case only in which damages may be recovered without proof of negligence—where one of the statutory regulations, which might by possibility have contributed to the collision, has been infringed. Here a statutory rule of law (*c*) requires that the ship which has broken the law shall be deemed to be in fault for the collision. It excludes evidence directed to show that the infringement did not in fact contribute to the collision, and renders the consideration of the question of actual negligence unnecessary.

(*a*) *The James Watt*, 2 W. Rob. 270, 278; and *per* Lord Esher, *The Margaret*, 6 P. D. 76.

(*b*) *The Titan*, 10 Asp. 350.

(*c*) 57 & 58 Vict. c. 60, s. 419.

The precise effect of this important enactment is considered in Chapter II., below.

Case of inscrutable fault.

Where a ship, or each of two ships, alleges negligence on the part of the other, and it is manifest that the collision was caused by fault somewhere, but the evidence does not satisfy the Court on which side the fault lies, no damages can on the same principle be recovered, and each ship bears her own loss (*d*). The English law as to the incidence of loss in this case differs from that of some foreign countries, and also, it seems, from what has been called the general maritime law (*e*).

What is negligence.

Negligence which, as stated above, is the foundation of the right to recover damages in an action of collision, is the failure to exercise the skill, care and nerve which are ordinarily to be found in a competent seaman. "We are not to expect extraordinary skill or extraordinary diligence, but that degree of skill, and that degree of diligence, which is generally to be found in persons who discharge their duty" (*f*). In *The Dundee* (*g*), Lord Stowell defined negligence as "a want of that attention and vigilance which is due to the security of other vessels that are navigating the same seas, and which, if so far neglected as to become, however unintentionally, the cause of damage of any extent to such other vessels, the maritime law considers as a dereliction of bounden duty, entitling the sufferer to a reparation in damages." In a case before the House of Lords, it was said that the duty of a seaman is "to take reasonable care and to use reasonable skill to prevent the ship from doing injury;" and this reasonable care must be tested by the circumstances of each

(*d*) *The Maid of Auckland*, 6 Not. of Cas. 240; *The Catherine of Dover*, 2 Hag. Ad. 145; *The Laconia*, 2 Moo. P. C. N. S. 161; and see *per* Lord Wensleydale, *Morgan* v. *Sim*, *The London*, 11 Moo. P. C. 307, 312. But formerly the law was otherwise: *infra*, p. 135 *seq.* As to whether trespass or case was the proper form of action at common law, see *Davis* v. *Saunders*, 2 Chit. 639; *Ogle* v. *Barnes*, 8 T. R. 188; *Huggett* v. *Montgomery*, 2 Bos. and P. N. R. 446.

(*e*) See Bell's Commentaries on the Law of Scotland (ed. 1870, by McLaren), I. 627; Bynkershoek, Quæst. Jur. Priv. C. 4, c. 18; Pothier, vol. 4, p. 444. There is no express authority for this statement as to the peculiarity of English law, and there are earlier decisions to the contrary; but there is no doubt that the law is as stated in the text. As to the Roman and foreign law on the point, see *infra*, p. 63, and the note at the foot of Chapter VI.

(*f*) *Per* Dr. Lushington, *The Thomas Powell* and *The Cuba*, 14 L. T. 603.

(*g*) 1 Hag. Ad. 120.

case, thus in the case of a collision between a ship being launched and another afloat, it was held that under the circumstances the utmost possible precautions by those in charge of the launch were essential, and that it was negligence not to take every possible step to assure themselves that nothing was approaching the place which the launch would reach (*h*). Generally speaking, negligence causing a collision may arise either from a breach of one of the regulations for preventing collisions or from a failure, as already stated, to exercise reasonable skill and care in a matter of seamanship. Thus, if a ship comes into collision through not going at a moderate speed in a fog, she has broken an international and written rule of seamanship. If, seeing a fog ahead, a vessel has not taken precautions to lessen her speed as she approaches the fog and a collision in the fog is a result, she will be held to blame, because those in charge have not exercised good seamanship (*i*).

A wrong step taken in the agony of the collision is not negligence.

If a vessel by her own fault makes a collision so imminent that it cannot be avoided except by extraordinary skill, nerve, or exertion on the part of the other ship, and a collision occurs, it will be held to have been caused by the former, and she will be liable for the entire loss (*k*). And the same principle applies in all cases of sudden and great danger whether caused by negligence or not. The law requires that a seaman should exhibit ordinary presence of mind and ordinary skill; but it is manifest that at a moment of great peril a man may do, or omit to do, something which may contribute to the collision, without thereby showing himself deficient in ordinary skill, care, or nerve. Such an act or

(*h*) *The George Roper*, 8 P. D. 119.

(*i*) *The St. Paul*, (1908) P. 320, at p. 336; 11 Asp. 152, at p. 156.

(*k*) *The Nor*, 2 Asp. M. C. 264; *The C. M. Palmer* and *The Larnax*, *infra*; *The Pyrus* and *The Smales*, Holt. 40; *The Sisters*, 1 P. D. 117; *The Bywell Castle*, 4 P. D. 219; *The William Frederick* and *The Bufoged Christensen*, 4 App. Cas. 669; *The Voorwaarts* and *The Khedive*, 5 App. Cas. 876. Cf. also *Clayards* v. *Dethick*, 12 Q. B. 439; and *per* Lord Ellenborough, C. J., in *Jones* v. *Boyce*, 1 Stark. 493, 495: "If I place a man in such a situation that he must adopt a perilous alternative (as jumping off a coach), I am responsible for the consequences." Amongst many American cases to the same effect are: *The Nichols*, 7 Wall. 656; *The Carroll*, 8 Wall. 302, *The City of Paris*, 9 Wall. 634; *The Lucile*, 15 Wall. 676; *The Favorita*, 18 Wall. 598; *The Falcon*, 19 Wall. 75; *The Sea Gull*, 23 Wall. 165; *The Mary Augusta*, 55 Fed. Rep. 343; *The Luzerne*, 157 Fed. Rep. 391.

omission is not held to be negligence (*l*). So where the action of the other ship is so unexpected and unaccountable that it could not reasonably have been anticipated, failure to do absolutely the right thing is viewed with lenience (*m*).

Except where there is a statutory presumption of fault.

There is, however, an exception to the above rule where a ship has, even under circumstances of sudden and extraordinary peril, infringed one of the statutory regulations that might by possibility have contributed to the collision. In such a case, although those on board have not, in fact, been guilty of any negligent act or omission (*n*), by the arbitrary enactment above referred to the ship is deemed to be in fault for the collision.

Examples.

The following cases illustrate the principle above mentioned, that a wrong step taken in the agony of the collision will not necessarily cause the ship to be held in fault for the collision.

A sailing ship (*o*) in a thick fog sighted another at so short a distance that in a minute, or less than a minute, the ships were in collision. Her helm was altered, but the head-sheets, which had just been let go, were not hauled aft, nor were the lee braces let go, so as to assist her head in paying off. It was held that, even if the collision could have been avoided by the measures suggested, the time was so short that there was no negligence in their omission.

A steamship bound down the river Thames on a very dark night was rounding-to in Gravesend Reach before coming to an anchor. While rounding-to she ran into and sank a vessel at anchor without a riding light up. The instant the latter vessel was seen the engines of the steamship were stopped and reversed, but her anchor was not let go. It was held that, even if the collision could have been averted by letting go the anchor, the master of the steamship was not guilty of negligence, because, at the moment, it did not occur to him to let go his anchor (*p*).

(*l*) *The Sisters*, 1 P. D. 117; *The Jesmond* and *The Earl of Elgin*, L. R. 4 P. C. 1, 7; *The Marpesia*, L. R. 4 P. C. 212; *Vennall* v. *Garner*, 1 Cr. & M. 21; *The City of Antwerp* and *The Friedrich*, L. R. 2 P. C. 25.

(*m*) *The Mexico*, 81 Fed. Rep. 50 n, where a steamship, whose duty it was to keep out of the way, crossed the other's bows and struck her on the far side.

(*n*) *Infra*, p. 39.

(*o*) *The Marpesia*, L. R. 4 P. C. 212.

(*p*) *The C. M. Palmer* and *The Larnax*, 2 Asp. M. C. 94; *The Elizabeth* and *The Adalia*, 22 L. T. 74, is a similar case.

But if a ship seeks to excuse herself for taking a wrong step, which, in fact, caused or contributed to the collision, upon the ground of sudden peril, she must show clearly that she was in no way responsible for the sudden peril (*q*).

Misleading lights; hailing or other embarrassing acts.

Upon the same principle, if a ship by carrying wrong lights, or by navigating in an improper or unusual manner, misleads or embarrasses another, she cannot attribute as a fault to the latter any act which was the probable result of her own negligence (*r*). So where a ship is hailed from another to take a particular course, and she obeys the hail, the other ship cannot be heard to say that the course was wrong, although, in fact, it caused the collision and was in violation of the regulations (*s*).

Both ships must comply with the regulations.

Where there is risk of collision, and the regulations require both ships to alter their courses, or to take other measures to avoid collision, it is negligence in either ship not to take the prescribed step. One of them cannot excuse herself for disobeying the law upon the ground that there would have been no collision if the other had obeyed the law. In such a case she would be prevented from recovering more than half her loss by the statute (*t*); and, independently of the statute, a vessel, which, by infringing the regulations, or by negligence in any other respect, contributes to a collision, is held to be in fault (*u*).

In ordinary cases no discretion as to complying with the regulations.

It is sometimes contended on the part of a ship that has failed to comply with the regulations, and is herself in fault, that the other ship is guilty of contributory negligence for not having departed from the regulations (*x*). Such a con-

(*q*) See *The Bywell Castle*, 4 P. D. 219, and the cases cited above. *The David Morris*, Brown, Ad. 273; *The Elizabeth Jones*, 5 Dav. 514.

(*r*) *The Rob Roy*, 3 W. Rob. 190; *The Scotia*, 14 Wall. 170; *The Mary Hounsell*, 4 P. D. 204; 40 L. T. 368.

(*s*) See *The Carolus Rotchers*, 3 Hag. Ad. 343, note. In this case a ship close-hauled on the starboard tack hailed another close-hauled on the port tack to keep her luff. The latter did so, and a collision occurred. The first ship was held in fault. It is submitted that the decision would be the same at the present day, and that such a case is provided for by Art. 27. See also *Wilson* v. *Canada Shipping Co.*, *The Lake St. Clair* and *The Underwriter*, 2 App. Cas. 389; 3 Asp. M. C. 361; *The James Watt*, 2 W. Rob. 270; *The Independence*, 14 Moo. P. C. 103, 109; *The Huntress*, 2 Sprague, 61.

(*t*) See below, pp. 39 *seq.*

(*u*) See *The America*, 2 Otto, 432.

(*x*) *The Byfoged Christensen*, 4 App. Cas. 669. In *The Tasmania*, the contention, which had not been raised before Butt, J., succeeded in the Court of Appeal, 14 P. D. 53; but the decision of that Court was in

tention will seldom succeed. It will be seen below (*y*) that a construction has been put upon 57 & 58 Vict. c. 60, s. 419 (4), and Article 27 of the regulations, which leaves to persons in charge of ships little discretion as to complying or not complying with a regulation, where it is possible that the collision may be avoided by obeying it. In *The Benares* (*z*), it was held by the Court of Appeal that where by departing from the regulations there is a chance of avoiding a collision that is otherwise inevitable, a vessel will not be held in fault for taking advantage of that chance; but that she should be held guilty of negligence for adhering to the regulations, the circumstances must be very exceptional (*a*).

Inevitable accident.

A collision which could not by any care or skill have been prevented is accurately described as an inevitable accident. But the term "inevitable accident" in Admiralty is sometimes used in a wider and looser sense to describe a collision which could not have been prevented by ordinary care. Indeed, the word "inevitable" has found its way into judgments in which a plaintiff has failed to prove that a defendant was negligent. As far as possible, therefore, cases of true inevitable accident should be distinguished from cases in which negligence on the part of a defendant has not been proved. The phrase is not a happy one, for a collision which might have been avoided by the exercise of extraordinary skill and care is not inevitable (*b*).

In *The Europa* (*c*), Dr. Lushington states that inevitable accident is "where one vessel doing a lawful act without any intention of harm, and using proper precautions, unfortunately happens to run into another vessel." Again, it has been said, "to constitute inevitable accident, it is necessary that the occurrence should have taken place in such a manner as not to have been capable of being prevented by ordinary skill and ordinary prudence. We are not to expect extraordinary skill or extraordinary diligence, but that degree of

turn reversed by the House of Lords (15 App. Cas. 223). See also *The Highgate*, 6 Asp. M. C. 512.

(*y*) *Infra*, p. 47.

(*z*) 9 P. D. 16.

(*a*) Cf. *H.M.S. Sans Pareil*, (1900) P. 267.

(*b*) In the old cases the equivalent of inevitable accident seems to have been "*casus fortuitus*." In a pleading of the seventeenth century a collision without any special circumstances is stated to have occurred because "God so willed it"; Selden Soc. Ser., Vol. 11, p. lxxxi.

(*c*) 14 Jur. 627, 629.

skill and that degree of diligence which is generally to be found in persons who discharge their duty" (*d*). The Privy Council, adopting the language of Dr. Lushington, defined inevitable accident to be "that which a party charged with an offence could not possibly prevent by the exercise of ordinary care, caution, and maritime skill" (*e*), and this must now be regarded as an authoritative definition (*f*).

A collision may be caused by negligence though inevitable for some time before it occurs.

From the above considerations it is evident that to sustain the plea of inevitable accident it is not enough to show merely that the collision was inevitable at the moment of, or for some moments before, its occurrence. The weight of a ship and her momentum are so great that her rudder, and even her engines (in the case of a steamship) are frequently powerless to avert a collision for some time before the ships come together. It is not enough for a ship to show that, as soon as the necessity for taking measures to avoid collisions was perceived, all that could be done was done. The question remains whether precautions should not have been taken earlier. When two ships are shown to have been in a position in which a collision was inevitable, the question is, by whose fault, if there was fault, did the vessels get into such a position? (*g*). Thus, if a vessel is proceeding at too great a rate of speed, or with no look-out (*h*), she cannot be heard to allege inevitable accident (*i*).

Burden of proving inevitable accident.

Where a collision is the result of inevitable accident the burden of proving that it was so does not in the first instance attach to the ship alleging it. But where a *primâ facie* case of negligence is made out, as when the plaintiff's vessel has been run into when at anchor, then it lies on the ship alleging inevitable accident to prove it (*k*).

Vessel in-

It seems that a vessel in default for not having lights, or

(*d*) *The Thomas Powell* and *The Cuba*, 14 L. T. 603. See also *The Maybey* and *The Cooper*, 14 Wall. 204, 215, for a similar statement by the Supreme Court of the United States.

(*e*) *Per* Sir J. Colville, *The Marpesia*, L. R. 4 P. C. 212, 220, citing from *The Virgil*, 2 W. Rob. 201. See also *The Lochlibo*, 3 W. Rob. 310, 318.

(*f*) *The Schwan* and *The Albano*, (1892) P. 419.

(*g*) See *The Independence*, 14 Moo. P. C. 103, 109; *The Despatch*, *ibid.* 83; *The Pennsylvania*, 23 L. T. 55; *The America*, 2 Otto, 432.

(*h*) *The Twenty-One Friends*, 33 Fed. Rep. 190.

(*i*) See *per* Dr. Lushington, *The Juliet Erskine*, 6 Not. of Cas. 633.

(*k*) *The Bolina*, 3 Not. of Cas. 208; *The Marpesia*, L. R. 4 P. C. 212; *The Merchant Prince*, (1892) P. 179; *The Schwan*, (1892) P. 419; *The Florence P. Hall*, 14 Fed. Rep. 408; and see *infra*, p. 29.

Infringing the regulations cannot plead inevitable accident.

for not complying with the regulations, cannot, at least where such non-compliance by possibility might have contributed to the collision, successfully plead inevitable accident (*l*). But such a defence may be good where the circumstances of the case made a departure from the regulations necessary, or where her inability to take the proper measures was caused by no fault of her own (*m*).

Collision inevitable so far as concerns the ship sued.

A collision may be an inevitable accident so far as the ship sued is concerned, although it was caused by fault elsewhere; as in the case of a ship which is thrown against another by the swell of a passing steamship, or by a third ship coming foul of her (*n*), or causing her suddenly to alter her course in order to avoid a fourth ship (*o*).

Disabled ship.

Where a ship is unable to take the proper measures to avoid a collision owing to her being disabled, or for some reason for which she is not responsible, it is the duty of the other ship to avoid her if she can. But a collision occurring in consequence of her disabled state will be held to be an inevitable accident, if the other vessel was ignorant of it, and was not in fault for not being aware of it, or for not keeping out of the way (*p*).

Instances of inevitable accident.

In the following cases the Courts have held that the collisions were the result of inevitable accident. It must, however, be pointed out again that the question before the Court in all these cases was, not whether the collision was inevitable, but whether it could have been avoided by ordinary care.

A vessel, close-hauled on the starboard tack, saw the red light of a vessel close-hauled on the port tack, a little on her port bow, and kept her course. The other vessel, having lost her head sails in a previous collision, was unable to bear up, and a collision occurred (*q*).

A steamer entering the Thames suddenly ran into a dense

(*l*) 56 & 57 Vict. c. 60, s. 419; see *infra*, pp. 39 *seq.*

(*m*) See *infra*, pp. 46 *et seq.*

(*n*) *The Sisters*, 1 P. D. 117; *The Hibernia*, 4 Jur. N. S. 1244.

(*o*) *The Schwan* and *The Albano*, 1892) P. 419; *The Thames*, 2 Asp. M. C. 512.

(*p*) *The John Buddle*, 5 Not. of Cas. 387.

(*q*) *The Aimo* and *The Amelia*, 2 Asp. M. C. 96. As to a vessel disabled by her own fault, see *infra*, p. 25.

fog of which there was no warning, and at once proceeded to anchor, as was the proper course, the master doing his best to ascertain that there was no vessel in the vicinity. His vessel, however, came into collision with a ship at anchor whose sound signals were unavoidably not heard by the vessel about to anchor. It was held that the collision was the result of an unavoidable accident (*r*).

A ship, which had made fast by order of the port authority to a private buoy, was held not to be in fault for a collision caused by the parting of the band round the buoy (*s*). And in America the drawing of a "spile," to which the vessel had properly been made fast (*t*), was held inevitable accident.

In the absence of evidence of negligence on the part of the crew, the jamming of the cable round the windlass, when the anchor was let go, was held to be an inevitable accident (*u*).

The parting of a cable in a gale of wind (*x*), and of moorings in calm weather (*y*), has been held to be an inevitable accident. But if there is negligence in not letting go an anchor, or in not having an anchor ready to let go when the vessel is adrift, she cannot sustain the defence of inevitable accident (*z*).

Where a collision occurred in consequence of the breaking of part of the steering gear, there being a latent defect in the metal, it was held to be an inevitable accident (*a*). But if the gear is manifestly insufficient or weak, or has not been properly cared for (*b*), the defence of inevitable accident cannot be sustained (*c*).

(*r*) *The Nador*, (1909) P. 300.

(*s*) *The William Lindsay*, L. R. 5 P. C. 338.

(*t*) *The Mary L. Cushing*, 60 Fed. Rep. 110.

(*u*) *The William Lindsay*, *supra*; *The Peerless*, Lush. 30. But see *The Agamemnon*, 1 Quebec L. R. 333, as to windlass carrying away.

(*x*) *The London*, Br. & L. 82; 1 Mar. Law Cas. O. S. 398.

(*y*) *The Ambassador*, Ad. Ct., Feb. 12th, 1875, cited in *The Pladda*, 2 P. D. 34. 37.

(*z*) *The Pladda*, 2 P. D. 34; *The Kepler*, *ibid.* 40; *The City of Peking*, 14 App. Cas. 40 (chain cable not bent); *The Woodford*, Court of Appeal, March 10th, 11th, 1905 (Shipping Gazette), where it was held that the master had not taken proper precautions to guard against a violent storm. As to such a plea by a ship which has given another a foul berth, see *The Secret*, 1 Asp. M. C. 318.

(*a*) *The Virgo*, 3 Asp. M. C. 285.

(*b*) *The Altenower*, 39 Fed. Rep. 118 (nut allowed to work off).

(*c*) *The M. M. Caleb*, 10 Blatchf. 467; *The Warkworth*, 9 P. D. 20, 145; *The Indus*, 12 P. D. 46; *The Merchant Prince*, (1892) P.

Where a ship was entering a harbour, and owing to a combination of circumstances, namely less water than usual, a strong breeze, and a freshet, the vessel struck the jetty and did damage to it, it was held that her owners were not liable, as the above circumstances constituted force majeure (*d*).

A ship which had been ashore on a sand, was driving over it, and came into collision with another brought up in deep water to leeward of the sand. To have let go her anchor before she was clear of the sand would have been dangerous to herself, and without letting go while on the sand she could not keep clear of the ship at anchor. A collision which followed was held to be inevitable (*e*).

A dumb barge in the Thames, driving with the tide, came into collision with a steamer going up against the ebb at the rate of two knots. There was evidence that the barge could not have been seen sooner than she was seen. In the absence of evidence of negligence on the part of the steamer, the collision was held to be an inevitable accident (*f*).

Where two ships, by no fault of their own, suddenly find themselves in a position in which a collision is imminent, and one of them omits to execute a manœuvre which possibly might have averted the collision, she will not necessarily be held in fault for not having taken the measure suggested. Where two large sailing-ships, one in the act of going about, and the other going free, sighted each other in a dense fog at a distance of less than 300 yards, and a collision occurred in less than a minute, it was held that the ship in stays was not in fault for not having hauled aft her head sheets to assist her helm, although if she had done so the collision might have been averted. The collision was held to be a case of inevitable accident (*g*).

In *The Resolution* (*h*), Sir J. Marriott held that a collision

179 (steam steering gear failing to act); *The Olympia*, 61 Fed. Rep. 120 (parting of the wire tiller rope); *The Riversdale*, 53 Fed. Rep. 286, *aliter*.

(*d*) *The Boucau*, (1909) P. 163.

(*e*) *The Thornley*, 7 Jur. 659. *The Buckhurst*, 6 P. D. 152, is a very similar case.

(*f*) *The Swallow*, 3 Asp. M. C. 371.

(*g*) *The Marpesia*, L. R. 4 P. C. 212.

(*h*) Marsd. Ad. Ca. 332; *The Atlanta*, 41 Fed. Rep. 639, was a similar decision, in the case of blinding snow; *The Rebecca Shepherd*, 32 Fed. Rep. 926 (fog).

caused by "showring weather, the darkness of the night, and the small distance of the two ships and shortness of time in discovering each other, being close," was an inevitable accident.

In the American decisions there are numerous examples of cases of which the following are a few selected instances. American cases.

A vessel in the open sea overtook another at night, the darkness being so great that she could not see the vessel ahead in time to avoid her (*i*). A sailing-ship in a narrow channel being suddenly compelled to let go her anchor to save herself from going ashore, in consequence of the wind failing, a steamship close astern unavoidably ran into her (*k*).

A large steamer was entering a harbour by a course that was not the usual one, but which was a course she had a right to go. As she was rounding the stern of a hulk, she suddenly saw and ran into a schooner which the hulk had prevented her seeing before. The schooner, which had just cast off from her tug, was setting her sails and drifting with the tide in a helpless condition (*l*).

A vessel overtook and passed another, and was then suddenly hindered by ice; each vessel took all reasonable steps, but the vessel which had been overtaken ran into and damaged the one which had passed her (*m*).

A vessel properly moored was set adrift by six other craft driving on her, and did some damage (*n*). A craft set adrift by an extraordinary mass of ice (*o*), or an extraordinary flood (*p*), and doing damage, has been held not to blame for this reason.

A vessel in tow of a tug salvor in a thick fog, by reason of her disabled state, took a sudden sheer, and fouled the masts of a sunken ship, to which, it was alleged, she was taken needlessly near. It was held that, as between the owners of the sunken wreck and the tug, the damage to the former was an inevitable accident (*q*).

(*i*) *The Morning Light*, 2 Wall. 550, 557.

(*k*) *The Electra*, 6 Beued. 189.

(*l*) *The Java*, 14 Wall. 189; *The Nova Scotian* and *The Quebec*, 1 Quebec, L. R. 1.

(*m*) *The Erandio*, 163 Fed. Rep. 435.

(*n*) *The Nora Costello*, 46 Fed. Rep. 869.

(*o*) *The Transfer* (No. 2), 56 Fed. Rep. 313.

(*p*) *Neel* v. *Blythe*, 42 Fed. Rep. 457.

(*q*) *The Edwin Hawley*, 41 Fed. Rep. 606.

But where a schooner in a leaky condition, in order to avoid sinking in deep water, cast off from a wharf alongside which she was lying, and before she was got under command drove against another vessel, it was held that the collision was not an inevitable accident (*r*). In the case of a ship improperly attempting to pass another ashore in a narrow channel, it was held that in attempting to pass the ship ashore, she did so at her own peril (*s*). In this country it has been held that a ship driven from her moorings by another which came foul of her in a gale of wind, could not escape liability to a third ship against which she drove, because she omitted to let go a second anchor (*t*).

Negligence in a salvor

If a vessel engaged in rendering salvage service to another negligently runs into the vessel she is assisting, she is liable for the damage; but she does not thereby forfeit her right to a sum which has been previously agreed upon as remuneration for the salvage service, unless the negligence is very gross. In such cases the Court regards error or negligence in the salvor less severely than in ordinary cases of collision (*u*). If the salvor, without negligence on her own part, is injured in a collision with the ship she is assisting, caused by negligence of the latter, she can recover for her loss (*x*).

or a tug.

It is an implied term of the ordinary towage contract, that each vessel shall be conducted with proper care and skill. The general rule is, that the tug is bound to obey the orders of the tow; but both as between themselves and as regards other ships the tug and her tow are each under the ordinary obligation to show proper skill and care in avoiding collision. Their respective duties and liabilities will be considered in Chapter VIII., below.

Negligence causing collision.

There is sometimes difficulty in determining whether negligence of which a ship is proved to have been guilty at or about the time of the collision, or in some way connected with the collision, is negligence contributing to the collision.

(*r*) *Sherman* v. *Mott*, 5 Bened. 372; but see *The Chickasaw*, 41 Fed. Rep. 627.

(*s*) *The Merrimac*, 14 Wall. 199.

(*t*) *The Pladda*, 2 P. D. 34; and see *The City of Peking*, 14 App. Cas. 40, as to having a second anchor ready to let go.

(*u*) *The C. S. Butler* and *The Baltic*, L. R. 4 A. & E. 178. See also *The Thetis*, L. R. 2 A. & E. 365; *The Diana*, 2 Asp. M. C. 366.

(*x*) *The Mud Hopper*, 4 Asp. M. C. 103.

The general rule is that a wrongdoer is liable for all the reasonable consequences of his negligence. Whether a collision which occurs under circumstances brought about by previous negligence can be said to have been caused by that negligence, must be determined by the particular circumstances of the case (*y*).

Negligence causing the loss but not the collision.

But where the negligence is an immediate cause of the loss, it is material in an action to recover damages for that loss, although it is in no way a cause of the collision in which the loss occurred. "The cause of action in collision cases is not merely the fact of the ships having come into impact with one another, for that by itself is no cause of action, but that damage, in the sense of injury, was caused to the property of the plaintiffs by reason of that collision" (*z*). Thus where a collision is caused entirely by the negligence of ship A., and there would have been no damage to either ship but for an improper act of B., both ships are held to be in fault. It is no answer to the claim of a plaintiff, whose negligence caused the collision, for the defendant, whose negligence caused the loss, to say: True it is, there would have been no loss but for my improper act; but you are the person who caused the loss, for if your ship had not been improperly navigated there would have been no collision and no loss. Unless the negligence of the one ship would, but for the negligence of the other, have caused no loss, the former ship is liable at least for half the loss of the other.

The Margaret.

In *The Margaret* (*a*) a dumb barge by her own negligent navigation came into collision with a schooner fast to a proper mooring buoy. The schooner was wholly free from blame in respect of the collision, but her anchor, which was hanging from her hawse pipe, with the stock above the water, pierced and sank the barge. This was an improper position for the anchor, and contrary to a bye-law made under a local Act in force in the Thames. But for the improper position of the schooner's anchor the barge would have suffered no injury. The collision was at night, and it does not appear that those

(*y*) *Greenland* v. *Chaplin*, 5 Ex. 213; *Cattlin* v. *Hills*, 8 C. B. 123, arose out of the same collision. Cp. *The Winstanley*, (1896) P. 297.

(*z*) *Per* Brett, L. J., *The Margaret*, 6 P. D. 76. And see *per* Lindley, L. J., *The Bernina*, 12 P. D. 58, 88.

(*a*) 6 P. D. 76.

on the barge saw the schooner's anchor before the collision (*b*). It was held that both craft were in fault; and that the schooner was liable for half the loss of the barge. In the Court below it had been held that the barge could not recover anything, she being alone in fault for the collision. This decision was varied by the Court of Appeal on the ground above stated—namely, that though the negligence of the schooner did not contribute to the collision, it did contribute to the cause of action, namely, the loss to the owners of the barge (*c*).

Causa proxima non remota spectatur.

On the other hand, the maxim *causa proxima non remota spectatur* applies to distinguish negligence for the consequences of which a defendant is liable from that which is merely collateral and immaterial upon the question of liability (*d*). Negligence such as will attract liability cannot be established merely by showing that, but for a previous improper act of the defendant, the collision would not have occurred. The act complained of "must have some proper connection, as a cause, with the damage which followed, as its effect" (*e*). Whether this proper connection exists between the act complained of and the loss is, it seems, a question of fact, and ordinarily a question for the jury (*f*).

A ship, in bad weather, was in a difficult position in Dover Bay getting her anchors, which were foul, in order to get to sea, and did not take the assistance of a tug, as she ought to have done. She consequently drove against the pier, and the tug, which she then took to tow her clear, parted the tow rope, in consequence of the heavy sea, and she drove against and injured the plaintiff's groyne and sewer outfall. It was held that the damage was caused by her negligence in not taking a tug in the first instance (*g*).

(*b*) This appears to be the fact which Gorell Barnes, J., relied upon to distinguish *The Monte Rosa*, (1893) P. 23, from *The Margaret*.

(*c*) Cp. *The Scotia*, 6 Asp. M. C. 541; *The Dunstanborough*, (1892) P. 363, note; and dist. *The Hornet*, *ibid.* 361; *Sills* v. *Brown*, 9 Car. & P. 601, and *The Gipsy King*, 2 W. Rob. 537, so far as they are inconsistent with *The Margaret*, would not, it seems, be now followed.

(*d*) See *per* Selborne, C., 6 App. Cas. 219; and Lord Blackburn, *ibid.* p. 226.

(*e*) *Per* Selborne, C., *ubi supra*.

(*f*) See *Tuff* v. *Warman*, 2 C. B. N. S. 740; 5 C. B. N. S. 573; *Milwaukee Rail. Co.* v. *Kellogg*, 4 Otto, 469.

(*g*) *The Gertor*, 7 Asp. M. C. 472. In an American case, *Slyfield* v. *Penfold*, 66 Fed. Rep. 362, the stranding of a schooner was held to have been

The question as to what are the consequences of a negligent or wrongful act for which the wrongdoer is liable was much discussed in the case of *Clark* v. *Chambers* (*h*). The rule accepted by the Court (*i*) was, that an action would not lie where the loss, although arising from an unlawful or negligent act of the defendant, did not immediately flow from it, and was not the reasonable, probable, or likely result of it. But a negligent act may be the proximate cause of loss, although, but for the wrongful act of a third party, there would have been no loss (*k*).

In *Spaight* v. *Tedcastle* (*l*), the question was whether the owners of a ship in tow, which had negligently permitted her tug to go too close to a bank, were prevented by the doctrine of contributory negligence from recovering from the owners of the tug damages for injury sustained by the subsequent fault of the tug in altering her course so as to put the ship ashore on a bank. It was held that, though those in charge of the tow had negligently allowed the tug to take the tow too close to the bank, yet, since the tug could with proper care, notwithstanding the negligence of the tow, have kept the tow clear of the bank, and had by an improper alteration of the helm caused the tow to go ashore, the tug was liable.

No difference between the rules of law and Admiralty as to what is negligence.

The question whether a particular act of negligence was a cause of the loss, so as to make the person charged with negligence responsible for the loss, must, it would seem, be answered in the same way, whether it is the act of a plaintiff or of a defendant; whether the negligence of other parties contributed to the loss or not; and whether the action is at common law or in Admiralty (*m*). "There is no difference

caused by a rival tug wilfully preventing the tug engaged in getting the tow line on board from saving the schooner.

(*h*) 3 Q. B. D. 327; see the rule affirmatively stated by the Master of the Rolls in *Re London, &c. Railway and Trustees of Gower's Walk Schools*, 24 Q. B. D. 326, at p. 329.

(*i*) *Per* Pollock, C. B., in *Greenland* v. *Chaplin*, 5 Ex. 243, 248; and by the Exchequer Chamber in *Sharp* v. *Powell*, L. R. 7 C. P. 253. See also *Lawrence* v. *Jenkins*, L. R. 8 Q. B. 274; *Sneesby* v. *Lancashire and Yorkshire Rail. Co.*, L. R. 9 Q. B. 263.

(*k*) *Englehart* v. *Farrant*, (1897) 1 Q. B. 240; *McIlwall* v. *Gt. Western Rail. Co.*, (1902) 1 K. B. 618. In *The Jackson*, 58 Fed. Rep. 607, two ships were held liable for damage to a third, although one could with ordinary care have avoided the consequence of the negligence of the other.

(*l*) 6 App. Cas. 217.

(*m*) See *per* Campbell, C., *The*

between the rules of law and the rules of Admiralty to this extent, that where any one transgresses a navigation rule, whether it is a statutory rule or whether it is a rule that is imposed by common sense, what may be called the common law, and thereby an accident happens of which that transgression is the cause, he is to blame, and those who are injured by the accident, if they themselves are not parties causing the accident, may recover both at law and in Admiralty" (*n*). The only case which seems to point to there being any difference between the rules of law and Admiralty as to what is negligence causing the loss is *The Fenham* (*o*), in which there are expressions of Lord Romilly to the effect that infringement of a statutory rule of navigation is to be taken as a cause of the collision, unless the person charged proves the contrary. Those expressions may well apply to such an infringement as that in *The Fenham* (absence of lights), but are not to be extended to every infringement of every rule of navigation (*p*).

Contributory negligence.

It has been suggested that the class of cases of which *Davies* v. *Mann* is the best known example, have no application in Admiralty; and there are cases which appear to give some support to the contention. The facts of *Davies* v. *Mann* (*q*), the well-known "donkey case," were shortly these:—The owner of a donkey, which had been negligently left hobbled and unguarded on a highway, sued the defendant, by the negligence of whose servant in driving along the highway at too rapid a speed the donkey was run over and injured. It was held that the donkey-owner could recover, his negligence notwithstanding. The suggestion is, that in a case of collision between ships, negligence, such as that of the donkey-owner in *Davies* v. *Mann*, would render the shipowner liable, although no collision would have occurred if the other vessel had been navigated with ordinary care. *The Fenham* (*r*) and *Hay* v. *Le Neve* (*s*) have been cited as authorities to this effect. In *The Fenham* a steam-

Friends, 4 Moo. P. C. 314; *per* Lord Blackburn, *Cayzer* v. *Carron Co.*, 9 App. Cas. 873, 880.

(*n*) *Per* Lord Blackburn, 9 App. Cas. 880.

(*o*) L. R. 3 P. C. 212.

(*p*) *Per* Lord Blackburn, 9 App. Cas. 882.

(*q*) 10 M. & W. 546.

(*r*) L. R. 3 P. C. 212.

(*s*) 2 Shaw's Scotch App. Cas. 395.

ship fouled a brig which was not carrying lights as required by the regulations of 1863. In the absence of proof to the contrary, the Privy Council held that the absence of lights caused the collision. In delivering judgment Lord Romilly said, "The burden lies on her to show that the non-compliance with the regulations was not the cause of the collision." In *Hay* v. *Le Nere* (*s*), a vessel brought up at night in an improper place and with no light exhibited was run into by another ship. It was held that the vessel at anchor, as well as the other vessel, was in fault. In both these cases the negligence of the plaintiff (carrying no light, and bringing up in an improper place) was not unlike that of the donkey-owner in *Davies* v. *Mann*, and it was contended in *The Fenham* that with ordinary care the defendant could have avoided the collision, notwithstanding the negligence of the plaintiff in carrying no lights. In both cases the legal consequence of the negligence was different from that in *Davies* v. *Mann*. Again, in an Irish case (*t*), it was doubted whether in Admiralty the doctrine of *Davies* v. *Mann* had any application. In America it seems to have been held that, in cases of unequal fault, the gross fault is the cause of the loss, and that the slight fault is immaterial—"did not contribute" (*u*). In one case (*x*) it was said expressly that the common law doctrine of contributory negligence did not apply in Admiralty. So where a collision made imminent by the gross fault of A., might have been avoided by B., the loss was divided between A. and B. (*y*).

But it is clear that there is no difference between the rules of law and of Admiralty (*z*) as to what amounts to negligence causing collision; and that, before a vessel can be held to be in fault for a collision, negligence causing or contributing to the collision must be proved. Thus, in *Cayzer* v. *Carron Co.*, *The Margaret* (*a*), a vessel infringed a statutory rule of navi-

(*s*) 2 Shaw's Scotch App. Cas. 395.

(*t*) *The Meteor*, Ir. Rep. 9 Eq. 567.

(*u*) *The Lord O'Neill*, 66 Fed. Rep. 77; *The Willamette*, 70 Fed. Rep. 874; *The Atlas*, 3 Otto, 302.

(*x*) *The Daylesford*, 30 Fed. Rep 633.

(*y*) *The Pegasus*, 19 Fed. Rep. 46; *The Maria Martin*, 12 Wall. 31.

(*z*) See *per* Lord Blackburn, *Cayzer* v. *Carron Co.* (*The Margaret*), 9 App. Cas. 873, 882. In *The Khedive* 5 App. Cas. 876, 892), it was assumed by Lord Blackburn that *Davies* v. *Mann* applied in Admiralty.

(*a*) 9 App. Cas. 873; followed in *H.M.S. Sans Pareil*, (1900) P. 267.

gation, which required her to wait under a point in the river until the other ship passed, and was in that respect guilty of negligence; and without that negligence, other circumstances being the same, the collision would not have happened; yet it was held that this negligence was not a cause of the collision. The decision in such a case will be the same, with regard to the liability of the ship in question, either for the whole or half of the loss, whether the other ship is in fault or not. In *The Margaret* the one ship was held to be in fault, because with ordinary care she could have avoided a collision, notwithstanding the negligence of the other; and it was for this reason that the negligence of the latter was held not to be a cause of the collision. So in *The Monte Rosa* (*b*), a tug by her own fault steered a course which brought her into collision with the anchor of a steamship, which the latter was, contrary to the Thames rules, carrying over her bows not stock awash, and was holed by the anchor. It was held that, since the tug could with ordinary care have kept clear of the steamship, she was alone in fault, and could recover nothing. *The Lord Saumarez* (*c*), an early case, is to the same effect as *The Margaret*. There a vessel recovered full damages, though in a fog she was carrying too great a press of sail, and was proceeding at too great a rate of speed. The decision proceeded upon the same grounds—that the defendant could with ordinary care have avoided the collision, notwithstanding the negligence of the plaintiff.

Hay v. *Le Nere* and *The Fenham* are not inconsistent with *The Margaret* and *The Lord Saumarez*. The facts in those cases differ from those in *Davies* v. *Mann* in this—that the negligence of the plaintiffs in the former cases was such that the defendants could not with ordinary care have avoided its consequences; whereas in *Davies* v. *Mann* the defendant could

Dist. *The Oringdean Grange*, (1902) P. 208; and note that there was no appeal by *The Oringdean Grange* in that case. *The Edgwater*, 65 Fed. Rep. 527; *The Portia*, 64 Fed. Rep. 811; *The Clara*, 55 Fed. Rep. 1021; *The Britannia*, 34 Fed. Rep. 546, on app. 46 Dav. 130; *The Francis*, 44 Fed. Rep. 510; *The Titan*, 23 Fed. Rep. 413; *Andus* v. *The Saratoga*, 1 Fed. Rep. 730, are American cases similar to *The Margaret*.

(*b*) (1893) P. 23.

(*c*) 6 Not. of Cas. 600; cf. *The Argo*, Swab. 462; *The Swanland*, 2 Sp. 107.

with ordinary care have avoided the donkey (*d*). But though it may be possible to reconcile some of the "both to blame" cases with *Davies* v. *Mann*, it would probably be found impossible to reconcile all of them. Many Admiralty cases (*e*) have been decided without sufficient consideration of the question whether the negligence found against each ship was negligence contributing to the collision. For example, in *The Marcia Tribou*, an American case, a schooner in the daytime ran down a sloop brought up in an improper place. Both ships were held in fault, and the loss was divided (*f*). There are many recent American cases to the same effect (*g*).

Confusion has been caused by the language used in some of the cases with regard to contributory negligence. In *Radley* v. *London and North Western Railway Co.* (*h*), it is stated by Lord Penzance that, "The plaintiff in an action for negligence cannot succeed, if it is found by the jury that he has himself been guilty of any negligence or want of ordinary care which contributed to cause the accident." But "though the plaintiff may have been guilty of negligence, and although that negligence may in fact have contributed to the accident, yet if the defendant could in the result by exercise of ordinary care and diligence have avoided the mischief which happened, the plaintiff's negligence will not excuse him," *i.e.* the defendant. *Davies* v. *Mann* and *Tuff* v. *Warman* (*i*) are cited as establishing this. On the other hand, in *Dowell* v. *General Steam Navigation Co.* (*k*), Lord Campbell, C. J., said—"There" (in *Davies* v. *Mann*), "although without the negligence of the plaintiff the accident would not have happened, the negligence is not supposed to have contributed to the accident within the rule upon this

(*d*) *Dowell* v. *General Steam Navigation Co.*, 5 E. & B. 195; and *Morrison* v. *General Steam Navigation Co.*, 8 Ex. 733, are cases with regard to absence of lights. In the former, the ship without lights was held in fault; in the latter, not.

(*e*) *E.g.*, *The United States*, 12 L. T. 33, where one ship was in fault under the rule in *Davies* v. *Mann*, and yet the other was held to be also in fault.

(*f*) 2 Sprague, 17; *The S. Shaw*, 6 Fed. Rep. 93; *The Milligan*, 12 Fed. Rep. 338, are similar cases.

(*g*) Cf. *The Richmond* and *The E. Heipershausen*, 63 Fed. 1020; *The Anerly*, 58 Fed. 794; *The Marion*, 56 Fed. 271; *The Premier*, 51 Fed. Rep. 766 (bad riding light and excessive speed, or bad look-out in the other ship).

(*h*) 1 App. Cas. 754

(*i*) 5 C. B. N. S. 573; see the judgment of Cresswell, J., 26 L. J. C. P. 263, 267.

(*k*) 5 E. & B. 195.

subject; and if the accident might have been avoided by the exercise of ordinary care and skill on the part of the defendant, to his gross negligence it is entirely ascribed, he, and he only, proximately causing the loss." It is not easy to reconcile these views with regard to the negligence of the plaintiff in *Davies* v. *Mann*. The question whether a specified act of negligence is a cause of the accident is a question of fact and not of law (*l*.) *Davies* v. *Mann* and the cases following it seem to show that even where, as matter of fact, an act of negligence of A. did contribute to the accident, the other party (B.) will (as defendant) be liable for the whole loss, or (as plaintiff) will be unable to recover, if he could with ordinary care have avoided the accident, notwithstanding the negligence of A. (*m*).

The difficulty may be put in another way. Did *Davies* v. *Mann* decide that, assuming contributory negligence in the plaintiff, he could recover, notwithstanding; or that, though there was contributory negligence in fact, there was none in law? *Radley* v. *London & North Western Railway Co.* points to the former as the correct view of the case; *The Margaret* (*n*) looks the other way. There Lord Blackburn appears to have considered that if the plaintiff's negligence did in fact contribute to the collision he would be liable; and that in *Davies* v. *Mann* there was no contributory negligence.

But the difficulty is rather one of words than of substance: for, with perhaps one exception, the cases agree in this, that negligence in one party is immaterial, if by ordinary care the other could, notwithstanding that negligence, have avoided the accident (*o*).

(*l*) See *per* Lord Blackburn, 9 App. Cas. 879. But see *contra*, *per* Williams, J., *Tuff* v. *Warman*, 2 C. B. N. S. 740, 758. *The Sans Pareil*, (1900) P. 267, is a remarkable instance of the rule in *Davies* v. *Mann*; although Vaughan Williams, L. J., thought that, owing to an admission in the Court below, the rule did not apply: *ibid.* p. 288.

(*m*) Cf. *The Argo*, Swab. 462.

(*n*) See also *Spaight* v. *Tedcastle*, 6 App. Cas. 217, 219, *per* Lord Blackburn.

(*o*) Cf. Pollock on Torts, 6th ed. 441 *seq.* Contributory negligence of the plaintiff does not prevent him from recovering; he does not recover because the negligence of the defendant was not the proximate (or decisive) cause of the loss. The exception mentioned above is *The Vera Cruz* (No. 1), 9 P. D. 88. In that case Butt, J., appears to have questioned the dictum of Lord Penzance, *supra*, p. 19. If the law be as there stated it would, he thought, put an end to the doctrine of contributory negligence altogether; since, in

The result of the cases, therefore, seems to be that (*p*)— (1) a ship, A., may recover full damages against the other, B.. where the collision was caused entirely by the negligence of B.; including the case where the collision would not have occurred but for negligence of A., provided B. could with ordinary care have avoided it; (2) subject to rule (3) A. can recover nothing, if with ordinary care exercised up to the moment of collision she could have avoided it; (3) A. can recover half damages, although with ordinary care exercised up to the moment of collision she might have avoided it, if B. by the exercise of like (*q*) care might have avoided it; (4) in the last case B. recovers half damages. In applying these rules the effect of 57 & 58 Vict. c. 60, s. 419, must not be overlooked; a ship "deemed to be in fault" for infringement of the regulations, can in no case recover more than half damages, and in every case is liable for at least half damages. Result of the cases.

The above statement of the case in which the loss is divided is put forward with some doubt. Lord Blackburn has stated the Admiralty rule as follows (*r*):—"It may well be that The case of both to blame.

every case where there is contributory negligence on the part of the plaintiff, there is, *ex hypothesi*, negligence on the part of the defendant. It is submitted that what was meant by Lord Penzance was ordinary care and diligence on the part of the defendant "in the result," *i.e.*, taking into consideration the negligence of the plaintiff and the circumstances existing after or by reason of it; or, as expressed by Lord Blackburn in another case, "proper care, subsequently exerted"; *Spaight* v. *Tedcastle*, 6 App. Cas. 217, 226; see also *per* Lord Watson, *Cayzer* v. *Carron Co.*, 9 App. Cas. 873, 886; *per* Wightman, J., *Tuff* v. *Warman*, 5 C. B. N. S. 573; *per* Lord Campbell, *supra*, p. 19. Cf. *per* Lord Watson in *Wakelin* v. *London and South Western Rail. Co.*, 12 App. Cas. 41: "If by the use of ordinary caution he (the plaintiff) might have avoided the injury, and did not, he is not entitled to recover damages." The decision of Butt, J., in *The Vera Cruz* became ineffectual by reason of *The Vera Cruz* (No. 2), 10 App. Cas. 59.

(*p*) This statement differs in words, but, except as to (3), not in substance from that contained in some earlier editions of this work. As to (3) there seems to be no authority for the suggestion that the negligence of one party can throw upon the other the duty to exercise more than ordinary care, or that under ordinary circumstances extraordinary care is required, and that its absence is to be treated as negligence. There may, of course, be circumstances (as at a launch) where the utmost possible precautions are no more than ordinary care requires. Cf. *The Owingdean Grange*, (1902) P. 208; and *per* Lindley, L. J., *The Bernina*, 12 P. D. 58, 89; and *per* Lord Esher, M. R., *ibid.* p. 61, for statements of the law as to contributory negligence. Rule (2) was adopted and applied by Barnes, J., in *The Monte Rosa*, (1893) P. 23, 30. Cp. *The Altair*, (1897) 1 P. 105.

(*q*) Like in degree or character, or simultaneous; see *infra*, p. 21.

(*r*) This dictum occurs in a dissenting opinion of Lord Blackburn in *Slattery's Case*, 3 App. Cas. 1155,

both parties are guilty of a neglect of duty, and that, if either had used reasonable care and skill, the collision would have been avoided. In such a case the maritime law, which is followed in the Admiralty, apportions the joint damage" (*s*). It is not easy to reconcile this dictum with *Cayzer* v. *Carron Co.* or with *The Monte Rosa* (*supra*, p. 18), in neither of which cases were the damages divided, though in both it would seem that "if either had used reasonable care and skill" the loss would not have happened. In both the negligence that was prior in point of time was held not to have contributed to the loss. If the definition of the case of "both to blame" suggested upon the last page is correct, it confines it within very narrow limits. Putting aside the case of one or both ships being deemed to be in fault under the statute, it seems that the negligence on the part of both ships, which causes the loss to be divided, must be acts or omissions either concurrent in time, or identical in character, or equal in degree of fault—in the words of Lindley, L. J. (*t*) —"as much want of reasonable care on A.'s part as on B.'s." A few such cases may be found in the books. A schooner (*u*) in New York harbour, contrary to the local regulations, brought up off the mouth of a slip. She was requested by a steamship about to back out from the slip to move, but refused. The steamship attempted to get under way and fouled her. It was held that both ships were in fault. It would seem that here more than ordinary care was required on the part of the steamship; and that, having voluntarily undertaken the risk of moving, the utmost precautions on her part were no more than reasonable (*x*). Two ships at anchor

1206—one of the "level crossing" railway cases which have given rise to much difference of judicial opinion. Cf. the opinion of Brown, J., in *The Nereus*, 23 Fed. Rep. 457, where *Cayzer* v. *Carron Co.* was discussed: "Where the earlier cause and the later cause are both proximate and direct, both vessels are liable; for it is unreasonable that a fault in one vessel tending directly to a specific collision should go blameless, merely because it was the first fault, or merely because the other vessel did not do all she might have done to avert the consequences of the other's fault."

(*s*) *The Dunstanborough*, (1892) P. 363, note, seems to have been decided in accordance with this dictum.

(*t*) *The Bernina*, 12 P. D. 58, 89. Cf. *per* James, L. J., in *The Margaret*, 6 P. D. 76, "both parties are equally to blame."

(*u*) *The Westernland*, 24 Fed. Rep. 703.

(*x*) Cf. *The George Roper*, 8 P. D. 119. *The Cachapool*, 7 P. D. 217,

both started their anchors, drove near each other, and eventually came into collision. It was held that both were in fault, since either might have taken a tug and avoided the collision (*y*). Two tugs (*z*) were racing for a job. One forced the other into collision with the third ship. It was held that both were in fault. The case of both ships having no look-out, or of two ships bringing up or mooring at the same time too close to each other (*a*), or rounding a blind corner without knowing whether there are other craft in the way or not (*b*), may be suggested as cases where the fault is equal; and *The Ovingdean Grange* (*c*) seems to have been dealt with by Sir Francis Jeune, P., as coming within this category. But until the decision in *Cayzer* v. *Carron Co.* there had been little or no discussion in any of the cases as to the exact limits of the rule of division of loss, and, perhaps, the law on the point is not yet finally settled. The statutory rule which imputes fault to a ship which infringes the regulations adds largely to the number of "both to blame" cases, by reason of the impossibility in such cases of proving that the collision was caused by the negligence of the other ship alone (*d*).

The real difficulty is that the common law recognizes the possibility of only one cause of loss, namely, the negligence of the plaintiff or the negligence of the defendant; whereas the Admiralty rule recognizes two possible causes, namely, the negligent acts of both. Although it has been stated in many cases that there is no difference between negligence at

may be distinguished on the ground that the launch there could not reasonably be postponed.

(*y*) *The Arran*, Cook, V. Ad. Rep. Quebec, 353.

(*z*) *Latham* v. *Hamilton and Merriman Co.*, 63 Fed. Rep. 856. In *The Jesse Spaulding*, 50 Fed. Rep. 583, one of the tugs which attempted to cross the other before she was clear, and forced her into collision with the third ship, she was held alone in fault. Cf. *The Chattahoochee*, 173 U. S. 540 (both ships going too fast in fog).

(*a*) *The Greenpoint*, 31 Fed. Rep. 231.

(*b*) *The Gamma*, 103 Fed. Rep. 703.

(*c*) (1900) P. 267. Observe that there was no appeal by *The Ovingdean Grange*.

(*d*) The effect of the statutory rule probably caused the matter not to be fully discussed in *The Sandhill*, (1894) App. Cas. 646. There A., one of two steamships proceeding in the same direction nearly abreast, wrongfully starboarded across the course of the other, B. If B. had not been so intent on cutting out A., and had at once reversed, there would probably have been no collision. Both ships were held in fault, upon what ground does not clearly appear. The statute was not relied on, but the question whether the collision might not have been avoided by ordinary care on B.'s part was not discussed.

common law and in Admiralty, it appears that (apart from the rule of division of loss) the legal consequences of a negligent act may be different when it results in a collision between ships from that which would follow in any other case.

Negligence of a compulsory pilot brings into operation the rule of division of loss where the other ship is also in fault.

Where a collision is caused by negligence in those on board both ships, and the negligence in ship A. is negligence of her officers or crew for which her owners are liable, while the negligence in ship B. is negligence of a compulsory pilot for which her owners are not liable, the question arises whether the owners of B. are prevented by the doctrine of contributory negligence, or by the practice of the Court of Admiralty, from recovering more than half their loss. It seems to be settled that they are entitled to recover half their loss, without deducting anything in respect to the loss caused to the other ship by the fault of the pilot; but that they are entitled to recover no more than half their loss (*e*). Thus the fault of the pilot affects the ship to some extent; whether it affects the ship in a case where she is not herself in collision, so as to prevent her owners from recovering damages against the owners of another ship by whose negligence she is injured, is not clear (*f*). Notwithstanding a decision to the contrary (*g*), the better opinion seems to be that she is not so affected. In a recent case Sir Francis Jeune, P., was prepared to hold that this resulted from Merchant Shipping Act, 1894, s. 633 (*h*).

Negligence causing the loss, or merely collateral.

The question whether a particular act of negligence, not directly causing the collision, but connected with it, is negligence contributing to the collision, seldom arises in collision cases. It has, however, occasionally been discussed, and it will be convenient here to indicate generally the form in which it may occur.

Defective equipment.

If a ship is negligently allowed to be at sea in a defective or inefficient state as regards her hull or equipment, and a collision occurs, which probably would not have occurred but for her defective condition, the collision will be held to have

(*e*) See *The Hector*, 8 P. D. 218, 222.

(*f*) See *Speight* v. *Tedcastle*, 6 App. Cas. 217, and observations of Lord Blackburn (p. 223) on *The Energy*, L. R. 3 A. & E. 48; see also *Dudman* v. *Dublin Port and Docks Board*, Ir. Rep. 7 C. L. 518.

(*g*) *The Energy*, *supra*.

(*h*) *The Adam W. Spies*, 70 L. J. Ad. 25.

been caused by the negligence of her owners. Thus a collision caused by the giving way or inefficiency of the steering gear (*i*), the clamping of the reversing gear so that it cannot instantly be worked (*k*), the parting of chain cable or moorings (*l*), the coming home of an anchor that is too light to hold the vessel (*m*), the failure to employ a tug when necessary (*n*), or the inefficiency of the tug (*o*), improper trim such as to render her unmanageable and dangerous, may be held to be caused by the negligence of her owners in permitting her to be navigated in a condition dangerous to other ships. In such cases of defective equipment it is open to the owners to show that the defect in the gear was latent (*p*), or that they took reasonable care to send the ship to sea in a safe and efficient state (*q*); and if they satisfy the Court that such was the case they will not be liable.

Ship disabled and unmanageable by her own fault.

If a ship is by her own fault disabled or unmanageable, and a collision occurs in consequence, the question arises whether she is to be held in fault for the collision; in other words, whether her original negligence is negligence contributing to the collision. The cases upon the point are conflicting. Where a ship by her own negligence got ashore, and in coming off unavoidably did damage, it was held that her owners were liable (*r*). So where a vessel having lost her lights in a collision with one ship was afterwards in collision with another ship, it appears to have been the opinion of the Court that, if the first collision was caused by her own fault and the second collision was caused by the absence of proper lights, she must be held to be in fault for the second collision (*s*). On the other hand where a vessel was sunk in the

(*i*) *The Virgo*, 3 Asp. M. C. 285; *The Warkworth*, 9 P. D. 20; *The Livia*, 1 Asp. M. C. 204; *The Peru*, 1 Pritch. Ad. Dig. 3rd ed. 1412; *The M. M. Caleb*, 10 Blatchf. 467; *The Allen Green*, 60 Fed. Rep. 459. See also *The European*, 10 P. D. 99 (steam steering gear "taking charge").

(*k*) *The Mexico*, 84 Fed. Rep. 504.

(*l*) See *The William Lindsay*, L. R. 5 P. C. 338.

(*m*) *The J. H. Rutter*, 35 Fed. Rep. 365.

(*n*) *The Gertor*, 7 Asp. M. C. 472.

(*o*) *The Ocean Wave*, *Marshall* v. *Moran*, L. R. 3 P. C. 205; *The Belgie*, 2 P. D. 57, note; *The Julia*, Lush. 224; *The Ratata*, (1898) App. Cas. 513.

(*p*) *The Virgo*, 3 Asp. M. C. 285.

(*q*) *Moffatt* v. *Bateman*, L. R. 3 P. C. 115.

(*r*) *Lords Bailiff Jurats of Romney Marsh* v. *Corporation of the Trinity House*, L. R. 5 Ex. 204; *ibid.* 7 Ex. 247.

(*s*) *The Kjobenhavn*, 2 Asp. M. C. 213. The facts were such as to render a decision upon the point unnecessary.

Thames in a collision caused by her own negligence, and another vessel six hours afterwards struck on the wreck and was injured, it was held by the Court of Appeal, in the absence of proof of negligence subsequent to the first collision, that her owners were not liable for the second collision. "It seems clear to me," said Brett, L. J., "that no greater liability can exist against the defendants than if their steamship had sunk without negligence" (*t*). There is no doubt that both in the case of a ship disabled, and a ship sunk, whether by her own previous negligence or not, special and additional care and precautions are required on the part of those in charge to avoid doing injury to other ships (*u*). But that a ship sunk or disabled in a collision caused by her own negligence should afterwards, and without having been guilty of any further negligence, be held liable for a subsequent and distinct collision, would seem to be contrary to the principle above stated, that a wrongdoer is liable only for the reasonable consequences of his negligence.

It may happen that two or more collisions are so immediately and directly the result of one negligent act that the wrongdoer will be liable for the damage done in each collision, though after the first collision, the others were inevitable, and though, but for the first collision, the others would not have happened (*x*). Thus a ship, by her own negligence adrift in a crowded dock or harbour, would, it is submitted, be liable for all the damage done by her in successive collisions with other craft before she was brought up and secured. In such a case it would be immaterial that, after the first collision, the others were inevitable, or that, but for the first collision, the others would not have happened. The reasonable consequence of sending a ship adrift under such circumstances is that she will strike and injure other craft to leeward.

(*t*) *The Douglas*, 7 P. D. 151, 160. In this case *Lords Bailiff Jurats of Romney Marsh* v. *Corporation of the Trinity House* does not appear to have been cited.

(*u*) See *Sccombe* v. *Wood*, 2 Moo. & Rob. 290; *Brown* v. *Mallet*, 5 C. B. 599; *White* v. *Crisp*, 10 Ex. 312; *Kidson* v. *M'Arthur*, 5 Ct. of Sess. Cas. 4th ser. (Rennie), 936; *The Douglas*, *ubi supra*. See further as to the duty of those in charge of sunken ships, *infra*, pp. 87 *seq.*

(*x*) Such a case occurred in *The Creadon*, 5 Asp. M. C. 585, which came before the Court on limitation of liability.

Three or more ships implicated.

If a collision occurs between two ships, A. and B., by the fault of one of them, and A. or B., or both A. and B., whilst in collision, or in consequence of the collision, drive against and injure a third ship, C., C. can recover against the ship in fault for the first collision. But the ship that fouls her is not liable unless she was in fault either for the first or the second collision (*y*). If two ships, A. and B., are both in fault for a collision between one of them and a third ship, C., C. can proceed in Admiralty against either A. or B., or she can proceed against both of them. It seems that she can recover the whole of her loss against either of them (*z*). If C. is in tow of A. or B. the case is different; for the ship in tow is generally responsible for the fault of her tug (*a*).

Damage, but no collision.

Where by the negligent navigation of one ship a collision occurs between two others, or another ship is damaged, either by collision or in any other way, the owners of the ship in fault are liable at law, and the ship, it seems, is liable in Admiralty (*b*). Thus, a steamship that sank another craft by the swell raised by her excessive speed was held liable (*c*). Where, in order to avoid a collision with A., made imminent by A.'s fault, a tug, B., was compelled to cast off her tow, C., and C. went ashore, it was held that C. could recover against A. (*d*). In order to avoid A. lying ashore in a fairway without a light, B. was obliged to put herself ashore; it was held that B. could recover against A. (*e*). The value of an anchor and chain slipped to avoid collision, made imminent by the other ship's fault, has been recovered in an Admiralty action *in rem* (*f*) and at law (*g*).

(*y*) *The Hibernia*, 4 Jur. N. S. 1244; *The Sisters*, 1 P. D. 117; *The Moxey*, Abbot, 73.

(*z*) In *The Milan*, Lush. 388, the owners of cargo on board one of two ships, both of which were in fault, recovered only half their loss against the other ship. In *The Bernina*, 12 P. D. 58; 13 App. Cas. 1, this point was left open. As to the liability of joint wrongdoers at law, see p. 95.

(*a*) See below, Ch. VIII.

(*b*) *The Wheatsheaf*, 13 L. T. 612; *The Industrie*, L. R. 3 A. & E. 303; *The Energy*, L. R. 3 A. & E. 48; *The Sisters*, 1 P. D. 117; *Luxford* v. *Large*, 5 C. & P. 421; *The Niobe*, 13 P. D. 55 (the action appears to have been *in rem*).

(*c*) *The Batavier*, 9 Moo. P. C. 286; *Luxford* v. *Large*, *ubi supra*.

(*d*) *The Wheatsheaf*, *ubi supra*.

(*e*) *The Industrie*, *ubi supra*.

(*f*) *The Port Victoria*, (1902) P. 25; *Johanssen* v. *The Eloina*, 4 Fed. Rep. 573. So of a tow cut adrift (*semble*): *The Mount Hope*, 84 Fed. Rep. 910.

(*g*) *Majoribanks* v. *Boyd*, Times, 11th Dec. 1873 (*The Almora's* cable fouled *The Astell's* when getting under way in the Hooghly, and *The Astell* slipped).

Alteration of course causing risk of collision.

In *The Seaton* (*h*) two steamships were proceeding on parallel courses, one on the quarter of the other and overtaking her. The sternmost ship altered her course, when three miles off the ship ahead, so as to make her course converge with that of the other and bring about risk of collision. After this she never altered her course, and struck the ship ahead. The leading ship appears either to have done nothing until she was struck, or to have taken a course which was clearly wrong. The overtaking ship was held solely in fault (*i*).

Whether negligence of the plaintiff is to be taken into account in estimating damages.

In common law actions juries have sometimes been permitted to take a so-called "equitable" view of the circumstances of the case; and, where there have been faults on both sides, to award a smaller sum for damages than they would have awarded had there been no fault on the part of the plaintiff. These cases (*k*) cannot be treated as authorities for the proposition that negligence of the plaintiff which did not either wholly or in part cause the loss is material upon the question of damages. It is wholly immaterial, and the rule is so stated by Pollock, C. B., in *Greenland* v. *Chaplin* (*l*).

What can be recovered as damages.

Closely connected with the question, whether a specific act of negligence caused the loss, is the question whether a particular item of loss can be recovered as damages caused by the negligent act. The same principle applies in either case—that the wrongdoer is liable for all the reasonable consequences of his negligence. The cases connected with the question as to the *quantum* of damages will be considered in Chapter V. below.

Wilful injury to a ship.

Where, as has sometimes happened, one ship is wilfully and maliciously (*m*) driven against another, the wrongdoer would

(*h*) 9 P. D. 1.

(*i*) Qu. whether in this case the leading ship was not also in fault. It would seem that, with ordinary care, she could have avoided the consequences of the defendant's negligence. See *supra*, pp. 16 *seq*

(*k*) *Raisin* v. *Mitchell*, 9 Car. & P. 613; *Smith* v. *Dobson*, 3 Scott. N. R. 336; 3 Man. & G. 59. The latter report does not agree with the former as to the reasons given by the jury for their verdict. See some remarks of Sir J. Patteson on this case in *Netherlands Steamboat Co.* v. *Styles*, 9 Moo. P. C. 286, 297.

(*l*) 5 Ex. 243.

(*m*) For an instance of such a case, see L. R. 1 A. & E. 64; *The Ida*, Lush. 6; *Slyfield* v. *Penfold*, 66 Fed. Rep. 571; *Gaffner* v. *Pigott*, 116 Fed. Rep. 486.

probably be held liable for the entire loss, notwithstanding negligence in the other ship in not avoiding the collision.

Proof of negligence.

To enable the plaintiff in a collision action to recover damages, he must prove affirmatively that his loss was caused by the negligence of the defendant or of some person for whose acts he is liable. The general rule was thus stated by Lord Wensleydale (*n*): "The party seeking to recover compensation for damage must make out that the party against whom he complains was in the wrong. The burden of proof is clearly upon him, and he must show that the loss is to be attributed to the negligence of the opposite party. If at the end he leaves the case in even scales, and does not satisfy the Court that it was occasioned by the negligence or default of the other party, he cannot succeed." So in the case then before the Court, it being proved that the plaintiff ship had no light, the inference was that, but for the absence of the light, the collision probably would not have occurred, and the plaintiff failed to recover (*o*).

Burden of proof; *primâ facie* negligence.

The plaintiff must therefore make out at least a *primâ facie* case. The burden of proof lies so far on him (*p*), and this burden is still on the plaintiff, if the defendants admit that their vessel is also to blame for the collision (*q*). But it does not follow that it lies on him throughout the whole case. Having made out a *primâ facie* case of negligence on the part of the defendant, the burden of proof is shifted, and the defendant will be liable unless he proves that his negligence in no way contributed to the loss (*r*). "Where certain inferences of fact have been established by numerous cases, they become to a great extent very nearly of the same

(*n*) See *Morgan* v. *Sim*, *The London*, 11 Moo. P. C. 307, 312. See *Harris* v. *Anderson*, 14 C. B. N. S. 499, for a case where the plaintiff failed through absence of such proof; and cp. *Wakelin* v. *L. & S. W. Rail. Co.*, 12 App. Cas. 41.

(*o*) In *The Fenham*, L. R. 3 P. C. 212, a similar presumption arose. See the remarks of Lord Blackburn on this case, *Cayzer* v. *Carron Co.*, 9 App. Cas. 873, 882.

(*p*) *The Bolina*, 3 Not. of Cas. 208, 210; *The Carron*, 1 Sp. 91; *The London*, 11 Moo. P. C. 307; *The Marpesia*, L. R. 4 P. C. 212; *The Benmore*, L. R. 4 A. & E. 132; *The Abraham*, 28 L. T. 775; *The Albert Edward*, 44 L. J. Ad. 19.

(*q*) *The Cadeby*, (1909) P. 257.

(*r*) *The Ligo*, 2 Hag. Ad. 356, 360; *The Sisters*, 1 P. D. 117; *The City of Antwerp*, and *The Friedrich*, L. R. 2 P. C. 25; *Cayzer* v. *Carron Co.* (*The Margaret*), 9 App. Cas. 873. See *Daniel* v. *Metropolitan Rail. Co.*, L. R. 3 C. P. 216; *ibid.* 591, as to what is sufficient evidence of negligence; S. C. *ibid.* 5 H. L. 45.

Collision with ship at anchor.

authority as if they were propositions of law" (*s*). This is notably the case in collision actions. In the common case of a collision in daylight between a ship under way and another at anchor in a proper place, the burden is upon the other ship to show that she was not in fault (*t*), for when a steamship runs down a vessel at her moorings in broad daylight, that fact is by itself *primâ facie* evidence of fault (*u*), but if the collision were at night the plaintiff would have to prove in the first instance that the lights on his ship were burning efficiently (*x*).

Again, instances of a shifting of the burden of proof after a simple *primâ facie* case of negligence has been made are the cases of a ship ashore (*y*), a fishing boat fast to her nets (*z*), a ship in stays hove to (*a*), lying dead in the water (*b*), or otherwise not under command, and, without negligence on her own part, unable to keep out of the way. It has been pointed out in America by the Supreme Court that a ship in tow in collision with another tow is in a wholly different position, as regards the burden of proof of negligence in one or both tugs, from that of a ship at anchor suing another under way (*c*).

The general rule that a vessel under way is *primâ facie* in fault for a collision with a ship at anchor applies, although the latter is brought up in an improper place, or has no riding light, provided the former could with ordinary care have avoided her. "It is the bounden duty of a vessel under way, whether the vessel at anchor be properly or improperly anchored, to avoid, if it be possible with safety to

(*s*) *Per* Mellish, L. J., L. R. 9 Ch. 713 (as to proof of damage in actions to restrain nuisances).

(*t*) *The Indus*, 12 P. D. 46; *The Bothnia*, Lush. 52; *The Otter*, L. R. 4 A. & E. 203; *The Annot Lyle*, 11 P. D. 114; *The Henri IV.*, 13 Quebec L. R. 379; *The Beaver*, 2 Bened. 118; *The Baltic*, 2 Bened. 452; *The D. S. Miller*, 76 Fed. Rep. 877; *The Meanatchy*, (1897) A. C. 351. And see *infra*, pp. 37, 38.

(*u*) *Per* Lord Watson, *The City of Peking*, 14 App. Cas. 40, 43. Cp. *The Indus*, *supra*; *The Merchant Prince*, (1892) P. 179.

(*x*) *The Telegraph*, 1 Sp. 427.

(*y*) *The F. & P. M.* (No. 1), 45 Fed. Rep. 703.

(*z*) *The Columbus*, 1 Pritch. Ad. Dig. ed. 1887, 239; *The Two Sisters*, *ibid.* 248; *The Bottle Imp*, 28 L. T. 286.

(*a*) *The Eleanor* and *The Alma*, 2 Mar. Law Cas. O. S. 240. But see *The London*, 6 Not. of Cas. 29; *The Rosalie*, 5 P. D. 245, in both of which cases the ships hove to were held to be in fault.

(*b*) *The James T. Easton*, 27 Fed. Rep. 464. A tug lying in the track of a ferry-boat, that refused to move when whistled to do so, was, in America, held in fault: *The Roslyn*, 22 Fed. Rep. 687.

(*c*) *The L. P. Dayton*, 13 Dav. 337.

herself, any collision whatever" (*d*). Even if a ship is brought up in the fairway of a river, if the other could with ordinary care have avoided her, the latter will be held solely to blame (*e*).

In *The Indus* (*f*) a steamship ran into a lightship, and it was suggested on behalf of the steamship that her steam steering-gear failed to act and that the collision was an inevitable accident. In the absence of any evidence that this was so, it was held that the *primâ facie* evidence of negligence against the steamship had not been displaced, and she was held alone in fault.

A ship that obstinately refuses to move from an anchorage where she necessarily endangers other craft will be held in fault for a collision that follows (*g*).

How to discharge the burden of proof.

A vessel's steam steering gear jammed, and, in broad daylight, she ran into a ship at anchor. There was no proof as to why it jammed; and there was hand gear, which was not used. It was proved that the owners had been careful to provide good steering gear. Butt, J., held that the defendants, the owners, had discharged the burden, which was upon them, of proving that the collision was inevitable. This decision was reversed upon appeal. Fry, L. J., saying that to sustain the defence of inevitable accident, the defendants must "either show what was the cause of the accident, and show that the result of that cause was inevitable; or they must show all the possible causes, one or other of which produced the effect, and must further show with regard to every one of those possible causes that the result could not have been avoided" (*h*).

Proof of absence of

In common law actions for negligence, there has of late

(*d*) *Per* Dr. Lushington in *The Batavier*, 2 W. Rob. 407; *Hay* v. *Le Neve*, 2 Shaw's Scotch App. Cas. 395; *The Marcia Tribou*, 2 Sprague, 17. And see *infra*, Ch. X.

(*e*) *Mayor, &c. of Colchester* v *Brooke*, 7 Q. B. 339. But dist. *Dalton* v. *Denton*, 1 C. B. N. S. 672. As to the right to bring up in a fairway, see *Anon. Case*, 1 Camp. 516, note *The Clara*, 12 Otto, 200, and *United States* v. *St. Louis, &c. Transportation Co.*, 184 U. S. 247, show that if a ship brings up in a place where others cannot with ordinary care avoid her, she will be held alone in fault. As to obstruction of highways on land, see *Harris* v. *Mobbs*, 3 Ex. D. 268; *Wilkins* v. *Day*, 12 Q. B. D. 110.

(*f*) 12 P. D. 46.

(*g*) *The Cachapool*, 7 P. D. 217.

(*h*) *The Merchant Prince*, 1892 P. 179, 189; and see *The Indus*, 12 P. D. 46, as to discharging the burden of proof.

contributory negligence in the plaintiff.

been much discussion whether it is necessary for a plaintiff to give evidence of absence of contributory negligence (*i*). And in an ordinary "day" collision between a ship under way and a ship at anchor, it would seem that the fact of the collision raises a presumption of negligence in the ship under way, which, unless rebutted by proof of negligence in the ship at anchor, must result in a judgment for full damages. The matter is not, however, free from doubt, for even in such a case it has been said in American cases that evidence of absence of negligence in the plaintiff is necessary to enable him to recover (*k*). When the point arises for final decision it will probably be found that the opinion of Kay, L. J., in *Smith* v. *South Eastern Rail. Co.* (*l*) is correct, and that, in order to raise a presumption of negligence in the defendant, it is not necessary for the plaintiff, in the first instance, to prove absence of negligence on his own part. In Admiralty actions, owing to the procedure by way of preliminary act, and the form of pleadings in common use, the question seldom arises.

The rule that the mere fact of a daylight collision between a craft under way and another at anchor is *primâ facie* evidence of negligence in the latter, is not without exceptions. A derrick or wreck-raising craft moored in a strong and narrow tideway over or alongside a wreck, although not in an improper position or unlawfully obstructing the fairway, nevertheless presents such an obstruction to other vessels that it would not be reasonable to presume that the latter are negligent merely because they foul the former. The difficulties of the craft under way are still greater, if they are sailing vessels and the weather is boisterous, or if they are tugs with

(*i*) See *Smith* v. *South Eastern Rail. Co.*, (1896) 1 Q. B. 178; *Wakelin* v. *London and South Western Rail. Co.*, *ibid.* 189, note; *Dublin, Wicklow and Wexford Rail. Co* v. *Slattery*, 3 App. Cas. 1155.

(*k*) In *The Clara*, 12 Otto, 200, it was said that "the plaintiff, in order to recover entire damages, must prove both care on his part and want of it on the part of the defendant"; and Parsons on Ship. I. 529, is to the same effect. Cf. *The Michigan*, 52 Fed. Rep. 501; *The Rockaway*, 19 Fed. Rep. 449 (a fog case); *The Florence P. Hall*, 14 Fed. Rep. 408, "the burden is on the libellant to prove his light was burning and could be seen"; *Middlesex Quarry Co.* v. *The Albert Mason*, 2 Fed. Rep. 821. *The R. R. Kirkland*, 48 Fed. Rep. 760, seems opposed to this.

(*l*) (1896) 1 Q. B. 178, 189. The cases as to the defence of compulsory pilotage, *infra*, Ch. X., are to the same effect.

a heavy train of barges in tow, and the obstruction is come upon suddenly and unexpectedly (*m*). In such cases the ship at anchor may reasonably be required to do what she can to assist the other to clear her, either by sheering with her helm, paying out chain, or in any other way possible; and it might be held to be negligence on her part not to do so (*n*).

Where the anchored vessel is lying in a fairway or frequented waters, out of ordinary anchorage ground, and the collision is at night or in a fog, and the questions whether she was in a proper place and exhibited proper lights, or sounded proper fog signals, and maintained a watch, are raised by the pleadings, the burden would seem to be on her to prove that she was not in fault in any of these matters (*o*).

In New York harbour, a ship was lying at a wharf with her bowsprit projecting into a slip, contrary to the harbour rules, and a ferry boat entering the slip struck the bowsprit, it was held that both were in fault, the one for being moored in an improper position, the other for not keeping clear of her (*p*). And so where the moored ship at night had not stowed her boom, which was left outboard over the rail (*q*).

So where the loss is not immediate, and other possible causes intervene (as where the vessel is lying in driving ice), the burden of proof may be on the ship at anchor to show that the loss was caused by the collision (*r*).

The May Queen (*s*), a barquentine running into Newhaven in a S. E. gale, let go her anchor when about 150 yards off a ketch at anchor. There was a spring flood tide running and the gale was right into the harbour. The port cable parted, and before the starboard anchor, which was let go, brought

(*m*) In American cases of this nature, the craft under way have been held to be free from fault; *The Chauncey M. Depew*, 59 Fed. Rep. 791. Cf. *The J. R. P. Moore*, 45 Fed. Rep. 267; *The Bridgeport*, 35 Fed. Rep. 159; *The Passaic*, 76 Fed. Rep. 460.

(*n*) See *Wells* v. *Armstrong*, 29 Fed. Rep. 216; and cases *infra*, p. 167.

(*o*) This opinion has been expressed in American cases; *The Armonia*, 67 Fed. Rep. 363.

(*p*) *The Fort Lee*, 31 Fed. Rep. 570; *The Margaret J. Sanford*, 30 Fed. Rep. 714; 37 Fed. Rep. 148; dist. *Dalton* v. *Denton*, 1 C. B. N. S. 672 (timber projecting from a wharf over the river bed).

(*q*) *The Industrie*, 27 Fed. Rep. 767.

(*r*) *The Maryland*, 14 Fed. Rep. 367.

(*s*) Ad. Div. 1 May, 1900.

her up, the barquentine fouled the ketch. It was held to be an inevitable accident, due, either to a latent defect in the cable, or to stress of weather. No latent defect was visible in the broken link of the chain, which was produced in Court; and the chain was sufficient in point of size.

Where one ship is by law required to keep out of the way.

Where two ships are approaching each other so as to involve risk of collision, the law (*t*) usually requires one of them to keep out of the way and the other to keep her course. If a collision occurs between two such ships, there is, it is submitted, no presumption that the ship required to keep out of the way is in fault (*u*); for the duty of the other ship to keep her course is no less stringent than that of the former ship, and until she proves that she did keep her course the fact of the collision is no evidence of negligence in the ship required to keep out of the way. But upon such proof being given, a presumption of fault in the ship required to keep out of the way arises, and unless she proves circumstances rebutting this presumption she will be held in fault without proof of any specific act of negligence on her part (*x*).

Though in clear weather and under ordinary circumstances the presumption is that a steamship is able to keep out of the way of a sailing ship, it may happen that by no fault of her own she is not able to do so. In such a case no presumption of negligence on the part of the steamship will arise. In a fog, for example, a sailing ship has no right to rely upon an approaching steamship, which she cannot see, being able to keep out of her way. It is the duty of the sailing ship, under such circumstances, to be in readiness to act herself;

(*t*) See Arts. 17, *seq.*, *infra*, p. 385.

(*u*) See *per* Westbury, C., *The City of Antwerp*, L. R. 2 P. C. 25; *infra*, p. 406; *The Florence P. Hall*, 14 Fed. Rep. 408.

(*x*) See the following American cases: *The Carroll*, 8 Wall. 302, 304; *The Scotia*, 14 Wall. 170, 181; *New York, &c. Mail Co.* v. *Rumball*, 21 How. 372, 385. In some cases, however, the burden has been thrown in the first instance upon the steamship to prove that the sailing ship altered her course: *The Seneca*, 47 Fed. Rep. 87; *The J. D. Peters*, 42 Fed. Rep. 269; *The Gypsum Prince*, 67 Fed. Rep. 612; *per* Brown, J., *The City of Truro*, 35 Fed. Rep. 317: "Where, upon the whole case, there is no decisive evidence of fault on the part of the sailing vessel, the steamer must answer for the collision, where no circumstances appear to show that the accident was inevitable." Cf. *The Pennland*, 23 Fed. Rep. 551; *The Badger State*, 8 Fed. Rep. 526; *Farr* v. *The Farnley*, 1 Fed. Rep. 631. The case is the same as between a free and a close-hauled sailing ship: *The Erastus Wiman*, 20 Fed. Rep. 245. Some of the foreign codes adopt highly artificial presumptions as to which ship is in fault.

and, if she simply stands on her course and does nothing until the collision occurs, she may be held in fault (*y*).

Where a sailing ship was lost with all hands in a collision with a steamship, the latter was held in fault upon the facts stated in her own pleadings, and upon evidence from a third ship that her lights were burning some time before the collision (*z*).

Whether not hearing a foghorn or whistle raises a presumption of negligence.

The question sometimes arises whether credible evidence from witnesses on board a ship, A., that they were listening but heard no fog-horn or whistle from ship B., though it was alleged by those on B. that a fog-horn or whistle was being sounded on their ship, which was in fact in the neighbourhood of A. for some minutes, and subsequently came into collision with her, amounts to proof that no horn or whistle was sounded. Such evidence frequently has to be weighed against equally credible evidence from B., that the horn or whistle was properly sounded on board B. The atmospheric conditions under which sounds are readily transmitted are peculiar; the attention of scientific men has been directed to the subject only in recent years, and the subject is at present imperfectly understood (*a*). The Courts are therefore unwilling to infer negligence from the fact that a fog-signal, which is proved to have been sounded in the vicinity, was not heard. The evidence of A. will not necessarily prove that proper signals were not made by B.; "the fact that the sound

(*y*) See *The Zadok*, 9 P. D. 114, 118.

(*z*) *The Aleppo*, 35 L. J. Ad. 9.

(*a*) Professor Tyndall arrived at the following conclusions, based upon elaborate experiments at sea and on shore in the neighbourhood of the fog-syren at the South Foreland:—(1) that the condition most unfavourable for the transmission of sound is "water in a vaporous form mingled with the air, so as to render it turbid and flocculent. This acoustic turbidity often occurs in days of surprising optical transparency." (2) "The air associated with fog is as a general rule highly homogeneous and favourable to the transmission of sound." (3) Rain, hail, snow, fog, have no sensible power to obstruct sound. (4) The sound range (of the syren) on a calm day varies from two-and-a-half to sixteen-and-a-half miles. Sir J. Douglas, in his evidence before the committee on electrical communication between lightships and the shore, 1887, states that the most powerful syren under certain conditions is not reliable beyond one mile; and that hot sun is bad for sound. He also states—a fact often doubted in Court—that he can tell within two degrees the direction from which a fog signal at sea comes. In the Channel Pilot, 9th ed. Art. 18, cited by Bucknill, J., in *The Koning Willem I.*, (1903) P. 114, 121, it is stated that "apart from the wind, large areas of silence have been found in different directions, and at different distances from the origin of the sound, even in clear weather."

of the fog-horn does not appear to have reached the ears of those on board *The Campania* is not sufficient to override the positive evidence from the witnesses from the barque that it was being properly sounded," and the evidence from B. will not prove that those on board A. were negligent in not hearing them (*b*). "The vagaries of sound in a fog," it has been said by nautical men of experience, "are of a most astonishing character." It has been noticed also that one ship's horn or whistle may drown that of the other ship, where the blasts are simultaneous.

Defective ship or equipment; shipowner not required to insure safety.

A ship is not one of those things dangerous in themselves, which entail upon their owners the responsibility of insuring safety (*c*). But the law casts upon the shipowner the duty of using reasonable care to insure that his ship, when she sails and while she is under way, is in a condition in which she may be navigated with safety to other ships. If she damages another ship in consequence of the giving way or inefficiency of her gear or equipment, a *primâ facie* case of negligence arises. The presumption of negligence may, however, be rebutted by showing that the defect was latent, that reasonable care was in fact used to put and keep her in good condition, or that the giving way of the gear was due to stress of weather or other unavoidable cause (*d*).

In these cases the principle of *Scott* v. *London and St. Katherine's Dock Co.* (*e*) applies. It was there held that "where the thing" (goods suspended over the pavement, which fell and injured the plaintiff) "is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if

(*b*) *The Campania*, (1901) P. 289; *The Zadok*, 9 P. D. 114, 118; *The Merthyr*, 8 Asp. M. C. 475; *The Nador*, (1905) P. 300. The Courts in America have come to a similar conclusion; *The Martello*, 46 Davis, 64; *The Senator D. C. Chase*, 46 Fed. Rep. 874; *The Emperor*, *ibid.* 143; *The Lepanto*, 21 Fed. Rep. 651.

(*c*) *Infra*, p. 68. As to unwieldy ratts of excessive size, see *The Niagara*, 44 Fed. Rep. 775; or tows of excessive length, *The Mount Hope*, and cases *infra*, p. 169.

(*d*) See p. 9, above.

(*e*) 3 H. & C. 596; *Byrne* v. *Boadle*, 2 H. & C. 722; 33 L. J. Ex. 13. Of the case in the text Willes, J., said (L. R. 2 C. P. 11): "There the defendants had in their possession, and under their control, something which was dangerous unless reasonable precautions were taken to prevent injury to third persons." It would seem that these remarks apply to the owners of ships. Cf. *per* Lord Halsbury, C., *Smith* v. *Baker*, (1891) App. Cas. 325, 335.

those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care." In *Moffatt* v. *Bateman* (*f*), it was held that the principle of *Scott* v. *London and St. Katherine's Dock Co.* did not enable a person, who was injured by being thrown out of a vehicle, to recover damages without affirmative proof of negligence on the part of the defendant. "There is nothing more usual than for accidents to happen in driving without any want of care or skill on the part of the driver"; and therefore no *primâ facie* presumption of negligence having been raised (this was the opinion of the Privy Council), it was held that affirmative evidence of negligence was necessary. In this case the kingbolt of the carriage, being defective, had broken, whereupon the horses bolted, and the plaintiff was thrown out. It was proved that the carriage was examined by a blacksmith every three months; and that the defendant, the owner, had not himself examined it before starting on the day of the accident. It was held that there was no negligence on the part of the owner in this respect.

Act charged must be negligent.

It is not enough to prove that the other ship omitted to do something that would have prevented the collision, or that she did something without which the collision would not have occurred. It must be proved that the omission or act complained of was negligent (*g*). If the plaintiff ship has herself infringed the regulations, or has been guilty of negligence which might have contributed to the collision, the burden is on her to show that the collision was not caused entirely by her own fault.

Burden of proving facts peculiarly in the knowledge of the person charged.

When one ship alleges want of lights or of a proper look-out, or insufficient moorings, or any such negligence on board the other as it is impossible or difficult for her to prove by direct evidence, the burden is on the latter, as it is peculiarly in her power to prove that her lights were sufficient, or that

(*f*) L. R. 3 P. C. 115; *Manzoni* v. *Douglas*, 6 Q. B. D. 145, is a very similar case. The question as to what is *primâ facie* proof of negligence was much discussed in that case, and also in *Kearney* v. *London, Brighton and South Coast Rail. Co.*, L. R. 5 Q. B. 411; *ibid.* 6 Q. B. 759; 39 L. J. Q. B. 209; *ibid.* 40 Q. B. 285; *Daniel* v. *Metropolitan Rail. Co.*, L. R. 3 C. P. 216; *ibid.* 591; *ibid.* 5 H. L. 45.

(*g*) *The Thames*, 2 Asp. M. C. 512.

there was no such negligence (*h*). "The burden of proof should under all circumstances be thrown on those who have a peculiar knowledge of the subject and peculiar means of proving it which do not belong to the other party" (*i*).

Specific acts of negligence.

Many of the innumerable acts and omissions which cause collision have been the subject of decision in the Courts with reference to the question of negligence. Infringement of the collision regulations, carelessness, want of look-out, and disregard of the ordinary rules of seamanship, are amongst the most frequent causes of collision. Cases illustrating specific acts of negligence, both infringement of the regulations for preventing collisions at sea, and neglect of the ordinary practice of seamen, are considered in Chapter XIV.; the cases as to "the ordinary practice of seamen" being collected under Art. 29, which expressly refers to the necessity of observing that practice.

(*h*) *The Swanland*, 2 Sp. 107; *The John Harley* and *The William Tell*, 13 L. T. 413; *The Conoho*, 24 Fed. Rep. 758.

(*i*) *The Swanland*, 2 Sp. 107, 109.

CHAPTER II.

STATUTORY PRESUMPTION OF FAULT.

Statutory presumption of fault in case of infringement of the regulations.

It has been already stated that under certain circumstances an arbitrary rule of law requires the Courts to hold a ship in fault for a collision, although no negligence on her part contributing to the collision is proved. And it will be seen below that this rule applies, not only where negligence is not proved, but where it did not exist, and where those in charge of the ship were, as regards negligence, absolutely free from blame. The circumstances which bring this stringent enactment into operation are as follows:—First, where, on the part of the ship sued, there has been an infringement of any of the collision regulations, which might by possibility have contributed to the collision; and, secondly, where the ship sued did not stand by to assist the other with which she had been in collision.

57 & 58 Vict. c. 60, s. 419 (4).

By 57 & 58 Vict. c. 60, s. 419 (4), it is enacted as follows:—

> "Where, in a case of collision, it is proved to the Court before which the case is tried that any of the collision regulations have been infringed, the ship by which the regulation has been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the Court that the circumstances of the case made departure from the regulation necessary."

History of legislation upon the subject of infringement of statutory rules of navigation.

To understand the effect of this enactment it will be necessary to refer to previous legislation upon the subject. By 14 & 15 Vict. c. 79, s. 28, and afterwards by 17 & 18 Vict. c. 104, s. 298, it was enacted, in effect, that if a collision was occasioned by the non-observance of any of the rules as to lights or navigation contained in or made under those Acts, the owner of the ship by which the rule was infringed should recover no damages for injury to his ship, unless it was proved

that the departure from the rule was necessary (*a*). The effect of these enactments was to abrogate the rule of the Admiralty, that a wrong-doing vessel shall recover half her loss if the other ship is also in fault, in the case of a vessel which had unnecessarily infringed the statutory rules. In each case the question had to be tried whether the infringement was negligence contributing to the collision. In *Tuff* v. *Warman* (*b*) and other cases (*c*) it was held, upon the construction of these enactments, that though the plaintiff had infringed the regulations, and by his negligence had brought the ships into danger, yet if the defendant could by reasonable care have avoided the collision, the plaintiff could recover. Where one ship, A., was in fault for not keeping a look-out, and the other, B., was in fault for infringing the statutory rule, it was held that A. could recover half her loss, and that B. could recover nothing (*d*). But it was held that sect. 298 did not prevent the owner of cargo on board a ship infringing the statutory rule from recovering half his loss (*e*). The effect of these enactments, so far as they abrogated the Admiralty rule of division of loss, was probably not apprehended by the legislature (*f*).

The next alteration in the law was made by 25 & 26 Vict. c. 63, s. 29 (*g*). The effect of this enactment was to restore

(*a*) The sections ran as follows: 14 & 15 Vict. c. 79, s. 28: "If in any case of collision between two or more vessels it appear that such collision was occasioned by the non-observance of either of the foregoing rules with respect to the passing of steamers, or" (the rules as to ships' lights made under the powers of the Act) . . . "the owner of the vessel by which any such rule has been infringed, shall not be entitled to recover any recompense whatever for any damage sustained by such vessel in such collision, unless it appears to the Court before which the case is tried that the circumstances of the case were such as to justify a departure from the rule," &c. The subsequent Act, 17 & 18 Vict. c. 104, s. 298, was as follows: "If in any case of collision it appears to the Court before which the case is tried that such collision was occasioned by the non-observance of any rule, &c. . . . the owner of the ship by which such rule has been infringed shall not be entitled to recover any recompense whatever for any damage sustained by such ship in such collision, unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the rule necessary." Under the latter Act, *The Juliana*, Sw. 20, was decided.

(*b*) 2 C. B. N. S. 740; on app 5 C. B. N. S. 573.

(*c*) *Morrison* v. *General Steam Navigation Co.*, 8 Ex. 733; *The Vivid*, 10 Moo. P. C. 472; *The Aliwal*, 18 Jur. 296; *The Telegraph*, *ibid.* 427. See also *The Juliana*, Sw. 20; *The Fairy*, 1 Sp. 298; *The Wansfell*, 1 Sp. 271.

(*d*) *The Aurora*, Lush. 327.

(*e*) *The Milan*, Lush. 388.

(*f*) *The Swanland*, 2 Sp. 110.

(*g*) "If in any case of collision it appears to the Court before which the case is tried that such collision

the Admiralty rule as to the division of damages where both ships are in fault, and a vessel guilty of an infringement of the statutory regulations was enabled to recover in the Admiralty Court (as she could previously to 14 & 15 Vict. c. 79) half her loss against a defendant vessel which was also in fault. The question whether a ship which had infringed a regulation applicable to the case was guilty of negligence contributing to the collision had still to be tried in every case (*h*).

The application of the doctrine in *Tuff* v. *Warman* prevented the above statutes from having the effect desired by those who framed them. Attention appears to have been called to the subject by the decision in *The Fenham* (*i*); and 36 & 37 Vict. c. 85, s. 17, which, in effect, is identical with 57 & 58 Vict. c. 60, s. 419 (4), the enactment now in force, was passed in consequence. The change in the language of this enactment was made with the following objects:—First, to take away the *ratio decidendi* in *Tuff* v. *Warman*; secondly, to render it unnecessary to have resort to an artificial rule as to the inference to be drawn from evidence (*k*); thirdly, to enable the Courts to adjudicate upon collision cases without the necessity of determining upon conflicting evidence the question of fact, (often a nice one,) whether or no an infringement of a regulation, applicable to the case, and that might by possibility have contributed to the collision, did, in fact, contribute to the collision (*l*); and, lastly, to increase the

was occasioned by the non-observance of any regulation made by or in pursuance of this Act, the ship by which such regulation has been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the rule necessary." The wording of this section seems to have been suggested by a passage in the judgment of Cockburn, C. J., in *Tuff* v. *Warman*, *ubi supra*.

(*h*) Under this Act the following cases were decided: *The Fenham*, L. R. 3 P. C. 212; *The Bougainville*, L. R. 5 P. C. 316; *The Palestine*, 13 W. R. 111; *The Pennsylvania*, *infra*, 23 L. T. 55.

(*i*) See *per* Lord Blackburn in *The Khedive*, 5 App. Cas. 876, 892; and perhaps by *The Bougainville* and *The J. C. Stevenson*, L. R. 5 P. C. 316 (1872, 1873).

(*k*) As in *The Fenham*, L. R. 3 P. C. 212. These two reasons for the alteration in the law are given by Lord Blackburn in *The Khedive*, 5 App. Cas. 893.

(*l*) *The Fanny M. Carvill*, 13 App. Cas. 455, note; 2 Asp. M. C. 565; in Court below, *ibid.* 478; L. R. 4 A. & E. 417, 422; cited by Lord Blackburn in *The Khedive*, 5 App. Cas. 876, 893; approved and followed by the Privy Council in *The Lapwing*, 7 App. Cas. 512; *The Hibernia*, 2 Asp. M. C. 454; *The Rondane*, 9 Asp. M. C. 106 (a steamship held in fault for not stopping

stringency of the regulations (*m*). The statute, therefore, imposes on a vessel that has infringed a regulation which is *primâ facie* applicable to the case, the burden of showing affirmatively that such infringement could not, by possibility, have contributed to the collision (*n*). The Court must therefore inquire into the facts, in order to ascertain whether the infringement could possibly have contributed to the collision, for it is not sufficient to find that it did not contribute.

The principle above stated was approved by the House of Lords in *The Duke of Buccleuch* (*o*), which case demonstrated that evidence was inadmissible to show that a breach of the regulations did not affect the collision, and that the owner of a ship which has infringed a regulation must prove, as above stated, the impossibility of it having done so. The same point was discussed in *The Bellanoch* (*p*), which was regarded as being less clear on the point than *The Duke of Buccleuch*, but as was pointed out in *The Corinthian* (*q*), it cannot have been intended by the Court in that case to alter the law as settled in *The Fanny M. Carrill* and *The Duke of Buccleuch* (*o*), and the above principle was followed by the Court of Appeal (*q*).

Cases as to infringement of the regulations.

The following are some cases in which the effect of an infringement of the regulations has been discussed:—

In *The Englishman* (*r*), a trawler had a light at the mast-head, but no side lights, as she ought to have had. No one on board the other ship saw her before the collision. The

and reversing, though whether the collision would have been avoided by her doing so was conjectural).

(*m*) *Per* Lord Watson, *The Khedive*, 5 App. Cas. 876, 901.

(*n*) *The Anselm*, (1907) P. 151; 10 Asp. 438. In Canada the course of legislation upon this subject has followed that of England. 31 Vict. c. 58, s. 6 (Canada), was to the same effect as 17 & 18 Vict. c. 104, s. 298, and in *The Eliza Keith* and *The Langshaw*, 3 Quebec, L. R. 143, it was held that a ship that had infringed the Canadian statutory rules could recover nothing, though the other ship was also in fault; but that the cargo-owner could recover half his loss; cf. *The Milan*, Lush. 388. See also the following Canadian cases:—*The Aurora*, 2 Stuart's V. Ad. Rep. 52; *The Arabian*, *ibid.* 73; *The Germany*, *ibid.* 158; *The Quebec* and *The Charles Chaloner*, 19 Low. Canada Jurist, 201. The subsequent Canadian statute, 43 Vict. c. 29 (following the English Act, 25 & 26 Vict. c. 63), restores the Admiralty rule as to division of loss where the statutory rules are infringed.

(*o*) *The Duke of Buccleuch*, 15 P. D. 86; on appeal, (1891) App. Cas. 310.

(*p*) *The Bellanoch*, (1907) App. Cas. 269.

(*q*) *The Corinthian*, (1909) P. 260.

(*r*) 3 P. D. 18. In *The Viola*, 59 Fed. Rep. 632, a similar American case, both ships were held in fault. See also *The Chusan*, 5 Asp. M. C. 476, and *The Argo*, 9 Asp. M. C. 74.

latter was held alone in fault upon the ground that there was no look-out, and that therefore the absence of the side lights on the trawler could not have contributed to the collision.

In *The Lapwing* (*s*), a steamship under way was held in fault under the statute for having, some four minutes or more before the collision, hauled down her masthead light, although her side light was seen by the other vessel for some time before the collision. So in *The Talbot* (*t*), a ship in the Mersey was held in fault for having a wrong light at her masthead, although the Court was uncertain whether it misled the other ship.

In *The Imbro* (*u*), a sailing ship lying becalmed, and nearly broadside on to a steamship coming up channel, was held in fault, under the statute, because she had a white light lashed to her taffrail, and visible to an approaching steamship.

In *The Main* (*x*) a sailing ship was held in fault under the statute for not exhibiting a stern light to an overtaking steamship. In *The Anselm*, a steamer was held in fault for omitting to give the three short blast signal, under Art. 28 of the Regulations for Preventing Collisions at Sea, to indicate her course (*y*).

In *The Gannet* (*z*) a steamship had a riding light forward, and another light in her main rigging 120 feet from her stern. It was held that the second light was not "at or near the stern" (Art. 11), and that its wrong position might have caused the collision. She was therefore held in fault.

Where a regulation which is material to the case is proved to have been infringed, as, for example, where one of the lights of the ship sued, which was open to the other ship, is proved to have been insufficient to satisfy the statute (*a*), the onus is on the ship carrying the improper light to show, if she can, that the departure from the regulations was necessary (*b*). In the absence of such proof she will be held to be within the penalty of sect. 17 (*c*). If she alleges

(*s*) 7 App. Cas. 512.
(*t*) (1891) P. 184.
(*u*) 14 P. D. 73.
(*x*) 11 P. D. 132.
(*y*) (1907) P. 151; 10 Asp. 438.
(*z*) (1899) P. 230.
(*a*) *The Duke of Buccleuch*, 15 P. D. 86; *supra*, n. (*o*).
(*b*) *The Memnon*, 62 L. T. 84; see *per* Lord Herschell, at p. 85, *infra*, p. 46.
(*c*) See *The Hibernia*, 2 Asp. M. C. 454; *The Arklow*, *Emery* v. *Cichero*, 9 App. Cas. 136; *The Vera Cruz*, 9

the other ship to be also in fault, it lies on her to prove, if she can, that it was not her fault alone that caused the collision (*d*).

A vessel sailing from Dieppe some days before the Regulations of 1880 came into force was held in fault for a collision, because she was not sounding and was not provided with a mechanical fog-horn. There was no proof that a mechanical horn could not have been procured at the port from which she sailed (*e*). But where a foreign ship came into the Mersey without having on board a second riding light, as required by the Mersey Rules, and a collision occurred before the master, who had gone ashore to get one, had returned to the ship, it was held that the circumstances made a departure from the regulations necessary within the meaning of 36 & 37 Vict. c. 85, s. 17 (*f*).

In *The Breadalbane* (*g*) a brig was being overtaken by a full-rigged ship. The brig did not show astern either a white light or a flare, in compliance with the regulations, but her binnacle light was visible over her stern. It was held by Sir R. Phillimore that the infringement of the regulations could not by possibility have contributed to the collision, and that the brig was not therefore to be deemed to be in fault under the statute. There is some difficulty in reconciling this decision with the cases above cited. The collision appears to have been partly caused by the crippled condition of the ship owing to some of her canvas being carried away ; perhaps for that reason the absence of the stern light may have been considered immaterial.

Regulations in force in the Mersey sea channels (*h*) required two riding lights to be exhibited, the forward, or bow light, not more than 20 feet above the ship's hull, and the after one at double the height of the former. A vessel was held in fault under the statute because her after light was, at most,

P. D. 88. *infra*, p. 45. *The Fenham*, L. R. 3 P. C. 212, is a similar case under 25 & 26 Vict. c. 63, s. 29.

(*d*) *The Arklow*, 9 App. Cas. 136.

(*e*) *The Love Bird*, 6 P. D. 80. Cf. *The Martello*, 46 Dav. 64 ; *The Energy*, 42 Fed. Rep. 301 ; *The Catalonia*, 43 Fed. Rep. 396 ; *The Louisburg*, 75 Fed. Rep. 424.

(*f*) *The Calypso* and *The Mississippi*, Ad. Ct. 7th, 8th, and 9th March, 1878. Cf. *The Chilian*, 4 Asp. M. C. 473 ; *The Trave*, 68 Fed. Rep. 390, where the use of a mouth fog horn was excused.

(*g*) 7 P. D. 186.

(*h*) Under 37 & 38 Vict. c. 52.

18 feet above the deck, whilst the forward light was 12 feet above the deck, and another vessel because both her lights were nearly the same height, about 20 to 22 feet above the deck (*i*).

Where a tug A., lashed alongside a ship B. at anchor, which she was about to assist into dock and ready to hold if her anchor came home, had not up the second towing lights required by the Mersey Rules, B. was held liable for a collision between herself and a third ship (*k*).

The cases above cited show that the words of sect. 419 (4), "any of the regulations," are not to be construed literally; that it is not an infringement of any regulation that will bring the section into operation, but only an infringement of a regulation "which was in the circumstances applicable" (*l*). In *The Fanny M. Carrill* it was held that *The Peru* was not in fault because her screens were seven inches short of the statutory length (three feet), it being clear that her lights were not in fact seen across her bow.

The regulation which is infringed must be one material to the case.

A regulation such as Art. 23, of which the object is not only to prevent collision but to minimise its effects (*m*), may, it seems, be infringed after the collision becomes inevitable, or where it is from the first inevitable. For such an infringement the ship would probably be "deemed to be in fault" under the statute, though *ex hypothesi* it could not have contributed to the collision.

The question remains whether an infringement of the regulations, even to the smallest extent, will bring a ship within the penalty of the statute. In a case under 17 & 18 Vict. c. 104, it was doubted whether the penal section (sect. 298) of that Act applied where the helm was ported a little, but not sufficiently to avert collision (*n*). Under the present enactment it could scarcely be contended that an insufficient alteration of the helm, or an infringement, even to the smallest extent, of one of the steering rules which was applicable to the case, could not, by possibility, have contri-

Infringement, to what extent will bring a ship within the penalty of sect. 419 (4).

(*i*) *The Vera Cruz* (No. 1), 9 P. D. 88. This case was reversed upon another point, 9 P. D. 96. *The Hermod*, 6 Asp. M. C. 509; *The Talbot*, (1891) P. 184, are similar Mersey cases.

(*k*) *The Devonian*, (1901) P. 221.

(*l*) *Per* Lord Watson, *The Voorwaarts* and *The Khedive*, 5 App. Cas. 876, 901.

(*m*) See *per* Lord Watson, 5 App. Cas. 903, 904.

(*n*) *The Bothnia*, Lush. 52.

buted to the collision (*o*). In such a case the statute would, as pointed out by Lord Blackburn in *The Voorwaarts* and *The Khedive* (*p*), exclude the application of the doctrine of *Davies* v. *Mann* (*q*), which was applied in *Tuff* v. *Warman*.

A regulation is not infringed until there is an opportunity of complying with it.

But a regulation is not infringed, within the meaning of the statute, if those in charge of the vessel did not in fact know, and could not, with ordinary care, have known, that the regulation had come into operation. If by a wrong manœuvre one vessel suddenly causes risk of collision to another, the latter will not be held in fault unless there is time for those in charge of her, being seamen of ordinary care, skill, and nerve, to appreciate the situation, and unless also there is opportunity for them to comply with the regulation. "When a sudden change of circumstances takes place, which brings a regulation into operation, though the thing prescribed by the regulation is not done by the person in charge, yet the regulation can hardly be said to be infringed by him, till he knows, or ought to have known, and but for his negligence would have known, of the change of circumstances" (*r*).

Although the literal interpretation of the statute has been departed from in determining what is an infringement of the regulations within its meaning, the penalty is strictly enforced when infringement is proved. In the same case in which the above dictum of Lord Blackburn occurs, the House of Lords held that there may be an infringement of the regulations, although those in charge of the ship do all that could be expected of seamen of ordinary skill and nerve, and although they have been guilty of no act which at common law, and apart from the statute, would amount to negligence.

The Voorwaarts and *The Khedive*.

The circumstances in this case, *The Voorwaarts* and *The Khedive* (*s*), were as follows:—The two vessels, ocean steamships of 3,000 and 3,740 tons respectively, were approaching

(*o*) See *The Arratoon Apcar*, 15 App. Cas. 37, 41. See *infra*, p. 51.

(*p*) 5 App. Cas. 876, 892.

(*q*) 10 M. & W. 546.

(*r*) *Per* Lord Blackburn, *The Voorwaarts* and *The Khedive*, 5 App. Cas. 876, 894; *The Emmy Haase*, 9 P. D. 81. Cf. *per* Brett, M. R., in *The Beryl*, 9 P. D. 137; *The Ngapoota*, (1897) App. Cas. 391; *The Meanatchy*, (1897) App. Cas. 351; *The Grenadier* v. *The August Korff*, 74 Fed. Rep. 974.

(*s*) 5 App. Cas. 876. Cf. *The Jay Gould*, 19 Fed. Rep. 765.

each other at night without risk of collision on nearly opposite and parallel courses, the green light of each being visible to the other on her starboard bow. At this time both vessels were going at full speed. When the vessels were somewhat less than a mile apart *The Voorwaarts* ported and showed her red light to *The Khedive*. This was a wrong manœuvre, and caused risk of collision. Thereupon the captain of *The Khedive*, without easing his engines, put his helm hard-a-starboard, and at the same moment gave the order to stand by the engines. One minute and a half afterwards he put his engines full speed astern. The collision occurred a minute and a half after this. The engines at the moment of the collision were going full speed astern. They ought to have been stopped and reversed as soon as the red light of *The Voorwaarts* appeared, at the moment when the order to put *The Khedive's* helm hard-a-starboard was given. The absolutely right manœuvre was therefore not adopted by *The Khedive*, and it was held by the House of Lords that, the "crossing" rule having been infringed without necessity, *The Khedive* was in fault under the statute. In the Court of Appeal it had been held that though the captain of *The Khedive* was wrong in not stopping and reversing at the moment when *The Voorwaarts'* red light was seen, yet that his error did not prove him to be deficient in ordinary care, skill, or nerve, and that, therefore, the collision not having been caused by negligence of those on board *The Khedive*, the owners of *The Voorwaarts* were alone liable. In the House of Lords it was held that, *The Khedive* having been within the operation of the crossing rule, and there being no special circumstances to justify a departure from the regulations, she was by the words of the statute to be deemed to be in fault, and that the question whether or no her captain had been in fact guilty of negligence was immaterial. *The Voorwaarts*, which by porting had brought about risk of collision in the first instance, and had kept her engines going at full speed up to the moment of collision, was held in fault both in the Court of Appeal and in the House of Lords.

The Voorwaarts and *The Khedive*.

From this case it would appear that the House of Lords considered that the purpose of the legislature was to substitute a rigid adherence to the regulations for the discretion which

a seaman was, under the previous law, at liberty to exercise; and that a justification for the harshness of the new enactment was to be found in the number of collisions which would be avoided if a rigid and almost mechanical adherence to the regulations was substituted for the uncertainty which is inseparable from an application depending upon the discretion of seamen (*t*).

The facts of *The Khedive* did not call for a decision as to the effect of the statute, where the infringement of the regulations was, though unsuccessful as regards averting collision, not only not negligent, but the only or the best chance of escaping collision. In *The Benares* (*u*) the Court of Appeal was called upon to decide this point. It was held that in such a case, *The Voorwaarts* and *The Khedive* did not apply, and that a ship will not be held in fault under the statute because her captain does not comply with the letter of the regulations, if such non-compliance is the only chance of escaping collision. In such a case the Court held that departure from the rules is "necessary in order to avoid immediate danger" within the meaning of Art. 23 of 1880 (the present Art. 27), and that therefore the penal clause of the statute did not apply. The facts in *The Benares* were peculiar, the collision having been caused mainly by *The Benares* not having a red light exhibited on her port side, and having very shortly before the collision exhibited a green light on that side. The following passage is from the judgment of Brett, M. R.:—"When *The Benares*' green light, and the green light alone, was seen, *The Gerarda* did no wrong by starboarding, for it was impossible, as it was then disclosed, for her to see how immediate was the then danger of collision. The vessels, however, eventually came so close to each other that the actual position of things was discovered, the port side of *The Benares* without a red light becoming visible to those on *The Gerarda*. Under these circumstances what was the master of *The Gerarda* to do?

The Benares.

(*t*) Whether it is desirable, or possible, by Act of Parliament to fetter the exercise of a seaman's discretion in the throes of a collision seems doubtful. See *per* Lindley, L. J., in *The Memnon*, 59 L. T. at p. 291; 6 Asp. M. C. 488.

(*u*) 9 P. D. 16, followed in *The Sapphire* and *The Girdleness*, Ad. Ct. Feb. 27th, 1884.

The Benares.

By Art. 18 (*x*), if there was nothing else in the circumstances, he ought to have stopped and reversed. But the rules of navigation are contained, not in one article, but in all the articles, and Art. 23 is as much to be observed as Art. 18. The navigation of vessels is to be conducted with a regard to both of them. As I understand one part of *The Khedive*, if *The Benares* had put *The Gerarda's* officer in such a position that every reasonable man would have done what the officer of *The Gerarda* did, yet if the Court could not come to the conclusion that the case was brought within Art. 23, *The Gerarda* would be held likewise to blame. But in this case the question is whether it is brought within Art. 23 and taken out of Art. 18? Was the necessity of the case such, and were the circumstances so special, that they rendered a departure from Art. 18 necessary? We are advised that these vessels were so placed that at the time when, under ordinary circumstances, Art. 18 would have been applicable, the position was such that the only chance of escape was for *The Gerarda* to starboard and continue full speed ahead. There was, therefore, a necessity within the meaning of Art. 23 for a departure from the rule laid down in Art. 18, and the facts take the case out of Art. 18. But then it has been argued that the danger referred to in Art. 23 is not the danger to either of the vessels approaching each other, but [to] some outside danger. The decision of the House of Lords in *The Khedive* gives no countenance to any such contention as this, and there is nothing in that case to show that the present case is not within the meaning of Art. 23." Bowen, L. J., says: "In truth, unless some reasonable (*y*) force is given to Art. 23, and to the exception it contains, a captain will have to sail with his eyes open into the jaws of death. If he obeys Art. 18, let us assume that it is certain death for his passengers and crew, that he has only one chance still open to him, and that by disobeying the particular rule. Such a case would surely be one in which a departure from the rules becomes necessary; otherwise a captain's duty would be to obey Art. 18, and go cheerfully

(*x*) Of the Regulations of 1880.

(*y*) This refers to the argument of counsel that the risk referred to in Art. 23 (of 1880) was a risk other than that of collision alone.

The Benares. to the bottom of the sea with his ship and all on board, sooner than take the one chance of safety still remaining to him. Such an interpretation of the regulations was never, in my opinion, intended by the House of Lords. I am of opinion that a departure from Art. 18 is justified when such departure is the one chance still left of avoiding danger which otherwise was inevitable."

The Memnon. In *The Memnon* (*z*), on the other hand, it was held that necessity for departure from the rules had not been established; and the principle which should guide the Court in determining whether in any case the evidence establishes such necessity is clearly stated. In that case, the steamships *San Salvador* and *Memnon* were approaching one another on nearly crossing courses, and *The San Salvador* having *The Memnon* on her starboard bow, it was the duty of the former to keep out of the way of the latter, and of the latter to keep her course. *The San Salvador* took no step to avoid collision until within three ship's lengths of *The Memnon*, when she starboarded, and thereby rendered collision imminent, and she was, accordingly, without difficulty found to blame. *The Memnon* kept her course and speed until the *San Salvador* starboarded, when she stopped her engines. At the trial, the Trinity Brethren advised Butt, J., "That the officer in charge of *The Memnon* was not justified, as a sailor, in supposing, until he was within three ship's lengths of *The San Salvador*, that *The San Salvador* would keep out of the way, and could do so without difficulty." In the Court of Appeal the assessors agreed with this opinion, but in answer to a further question advised the Court, "that if *The San Salvador* had kept the course which she was keeping, without porting or starboarding, she would have gone a length and a half astern of *The Memnon*." Notwithstanding this, the Court of Appeal, affirming the judgment of Butt, J., held that *The Memnon* was to blame for not stopping sooner in compliance with the regulations, on the ground that the officer in charge of her was not justified in assuming, under the circumstances, that "*The San Salvador* would do what was right," and this decision was, in turn, affirmed by the

(*z*) 6 Asp. M. C. 488.

House of Lords. Lord Herschell, in addressing the House, said: "When once it is shown that it was brought home, or ought to have been brought home, to the mind of the master of a vessel, that the courses upon which the ships were approaching, and the circumstances, involved risk of collision, the onus is thrown upon him of justifying his not doing that which the rule prescribes. . . . The question whether a departure was necessary or not must, no doubt, be determined by the Court; but it must be determined upon the point being raised, and upon some evidence being tendered to the Court, to show that to have followed the rule would have either created that very risk of collision, which it was the purpose of the rule to avoid, or have increased instead of diminished the risk of collision." This case must be distinguished from *The Otto* and *The Thorsa* (*a*), where it was held that the one ship was justified in expecting the other to do the right thing (porting or ceasing to starboard), and therefore in not stopping and reversing, until the collision became inevitable. *The Memnon.*

The breaking down of a mechanical fog-horn has been held to make a departure from the regulations necessary, and a ship sounding a mouth-horn under such circumstances was held not to be in fault under the statute (*b*). Breaking down of fog-horn.

It appears that what the law requires in respect of the fixing and mechanical details of ships' lights is a reasonable compliance with the regulations. A very small departure from the letter of the regulations on these points is not an infringement within the meaning of the statute. This was the view taken by the Court in *The Fire Queen* (*c*). There an obscuration by the starboard cathead of the green light to the extent at the distance in question of an arc of $2\frac{1}{2}$ or 3 degrees was held not to be an infringement: "What we must look to," said Butt, J., "is whether there is a reasonable compliance with the regulations." The learned judge held also that the obscuration did not and could not have contributed to the collision; but the value of the decision upon Ships' lights a reasonable compliance with the regulations required.

(*a*) *Wilson* v. *Currie*, *The Otto* and *The Thorsa*, (1894) App. Cas. 116.
(*b*) *The Chilian*, 4 Asp. M. C. 473; *The Trave*, 68 Fed. Rep. 390.
(*c*) 12 P. D. 147. Cf. *The General Birch*, 6 Quebec L. R. 300, as to shape of lantern; *The Sans Pareil*, (1900) P. 267, 270.

the first point is not, it is submitted, thereby lessened. Having regard to the class of people for whose guidance the regulations are framed, and by whom they are worked, and also to the circumstances under which they are worked, it is difficult to suppose that the legislature could have intended anything more than a reasonable compliance with the regulations as to lights and sound signals. In *The Glamorganshire* (*d*), it was held that carrying the side lights in the rigging, where it is impossible for them to be fixed with mathematical accuracy, does not bring the ship within the penalty of the statute. So where lights have to be shifted from riding, towing, or fishing to under-way lights or *vice versâ*, a ship would, probably, not be held in fault under the statute because the change of lights was not instantaneous. As regards the steering and sailing rules, the decision in *The Khedive* (*e*) shows that a stricter view is taken.

Whether the statute applies where the collision is from the first inevitable ;

The regulations are "for preventing collisions at sea," and it would seem that, if that were their only object, where a collision is from the first inevitable, the regulations do not apply, and therefore cannot be infringed. The point arose in *The Buckhurst* (*f*), but the facts of that case made a decision of the point unnecessary. It seems, however, to have been the opinion of Sir R. Phillimore that the statute may apply, though the collision is inevitable. In *The Voorwaarts* and *The Khedive* the opinions of the majority of the learned lords, and the judgments of the Court of Appeal and Admiralty Division assume that the collision was not inevitable when *The Voorwaarts* first showed her red light. But Lord Blackburn (*g*) appears to have been of opinion that the collision was then inevitable, and that the manœuvre of *The Khedive*, though well adapted to lessen the force of the collision, being contrary to the regulations, placed her in the wrong under the statute. As pointed out above, there is some difficulty in supporting this view of the effect of the statute, if the only object of the regulations is the prevention of collisions. But in *The Khedive* Lord Watson stated that

(*d*) 13 App. Cas. 454. *The Gannet* and *The Philadelphian*, *infra*, p. 363, are decisions as to the position of lights.

(*e*) *Supra*, p. 46.

(*f*) 6 P. D. 152.

(*g*) 5 App. Cas. 895.

the object of the "stop and reverse" rule is "to obviate the risk and minimize the results of collision" (*h*). A regulation having this object may well be infringed, where the collision, but not the damage, is from the first inevitable.

or where the infringement is in the agony of the collision;

It is submitted that *The Khedive* does not decide that a ship will be held in fault for a step taken in the agony of a collision and due entirely to the imminence of the danger (*i*). In the case, for example, of a sailing ship going about—"altering her course"—under the bows of a steamship, where the latter has approached her so close as to frighten her into doing something, the question arises, whether the sailing ship will be held in fault under the statute? If she does not alter her course until the collision is inevitable it would seem that the statute does not apply at all (*k*). If she stands on until the risk is so great that human nature can go no further, and then bears up or goes about, it would seem reasonable to hold that her change of course at such a moment is not an infringement of the regulations, but rather an act caused by the imminence of the peril and the fault of the other ship.

or where previous negligence renders departure from the regulations necessary.

It seems that the statute would be held not to apply where a ship is unable to comply with the regulations, although such inability is consequent upon, though not caused by, previous negligence on her part. If, for example, a ship loses one of her side lights in a collision caused by her own fault, and before she can replace it a second collision is caused by the absence of her side light, it seems that she would not be held in fault under the statute. Her inability to comply with the regulations could hardly be said to be caused by the negligence which caused the first collision (*l*), and unless she has an opportunity of complying with the regulations, she cannot be said to have infringed them (*m*). But a vessel will not escape the consequences of an infringement of the regulations, though she was in fact unable to comply with them, if such inability

(*h*) 5 App. Cas. 903, 904. And see 9 App. Cas. 651, 652. As to whether 57 & 58 Vict. c. 60, authorizes regulations to be made with this object, see below, p. 318.

(*i*) The captain of *The Khedive* deliberately elected to depart from the regulations.

(*k*) See *supra*, pp. 46, 52.

(*l*) See *The Douglas*, 7 P. D. 151.

(*m*) *Supra*, p. 46.

was caused by want of a proper look-out, or other immediate negligence (*n*).

Whether a tug will be held in fault for an infringement by her tow.

A tug with a ship in tow has, under the statute, been held in fault for a collision between herself and a third ship, where the infringement was by the tow alone. A sailing ship with her side lights burning had in tow a pilot boat from which she had taken a pilot. The latter had her masthead light burning. The sailing ship was held in fault for a collision with a third ship (*o*). So, in *The Devonian* (*p*), a ship at anchor was held in fault because her tug, fast alongside and ready to tow, had not up her towing lights. These decisions appear to rest upon the doctrine that a tug and her tow are in law for some purposes treated as one ship (*q*). The same question as to the effect of the statute arises where it is sought to make a ship in tow liable for an infringement of the regulations by her tug (*r*).

Mere negligence, apart from the regulations, is not within the penalty of the statute.

The object of sect. 419 (4) is to enforce the observance of the regulations, and not the rules of seamanship generally. Neglect to keep a look-out, or to observe any precaution required by the ordinary practice of seamen, as mentioned in Art. 29, would not, it is submitted, bring a ship within the penalty of the statute (*s*). Nor, it is submitted, would failure to depart from the regulations, where such departure is necessary within the meaning of Art. 27. In the rare case of the regulations applying to one ship and not to the other, it is doubtful whether sect. 419 (4) could be applied (*t*). Whether the infringement of a regulation which could not by possibility have contributed to the collision, although it may have augmented the damage, would bring the ship within the penalty of the statute has not been decided.

Regulations of which an infringement

The sanction of sect. 419 (4) extends to other regulations besides those made under sect. 418 of M. S. Act, 1894.

(*n*) See *The Emmy Haase*, 9 P. D. 81.

(*o*) *Mary Hounsell*, 4 Asp. M. C. 101; 4 P. D. 204. And see *The Giraffe*, 1 Pr. Ad. Dig. (3rd ed.) 234, 235.

(*p*) (1901) P. 221. And see *The Sans Pareil*, (1900) P. 267, 270.

(*q*) *Infra*, p. 167.

(*r*) See further as to this, *infra*, pp. 167 *seq.*

(*s*) Though in *The Sans Pareil*, *supra*, this was questioned. By American Courts, neglect of such precautions has been called an infringement of the Act of Congress embodying the regulations: *The Farragut*, 10 Wall. 334; *The Atlas*, 10 Blatchf. 459, 466. But see *The Havanna*, 54 Fed. Rep. 411.

(*t*) These questions were discussed in *The Sans Pareil*, *supra*.

Collision regulations for particular localities have been made by certain Acts which either incorporate the penal clause of the Merchant Shipping Acts or contain themselves a similar clause. Thus it was also held that under 37 & 38 Vict. c. 52, an infringement of the statutory rules in force in the sea channels and approaches to the River Mersey had the same effect as an infringement of the sea regulations (*u*.) And a ship infringing rules made under 28 & 29 Vict. c. 125, s. 7 (Dockyard Ports Regulation Act, 1865), would, it seems, be deemed to be in fault under the statute. The Solent Navigation Act, 1881 (44 & 45 Vict. c. 219) (local), contains (sect. 8) a provision to the effect that a ship infringing any regulation made under that Act shall be deemed to be in default, unless it is shown to the satisfaction of the Court that the infringement was necessary.

brings the ship within the statute.

But the statute does not apply to an infringement of rules, such, for example, as the Thames rules (*x*), made under a local Act, which does not incorporate the penal clause of the Merchant Shipping Acts. A ship infringing these rules will not be held in fault unless the infringement did, in fact, contribute to the collision.

Effect of an infringement of local rules.

Whether an infringement of rules of navigation made under 57 & 58 Vict. c. 60, s. 421 (1), will bring the ship within the penalty of sect. 419 (4) is not altogether clear. Under the previous Merchant Shipping Acts, a ship in the Humber (*y*), and two in the Mersey (*z*), were held in fault for breaches of local rules. In those cases the rules in question were clearly "made under" the Merchant Shipping Acts, and so were within the express words of 36 & 37 Vict. c. 85, s. 17. The words of 57 & 58 Vict. c. 60, s. 419 (4), are different; "the collision regulations," of which an infringement is there spoken, are regulations made by his Majesty under the power given to him by sect. 418 of the same Act. It would seem, therefore, that the penal section (sect. 419

Local rules made under sect. 421.

(*u*) *The Lady Downshire*, 4 P. D. 26; *The Vera Cruz*, 9 P. D. 88. *The Devonian*, (1901) P. 221, is a similar decision under the Mersey Channels Act now in force, 60 & 61 Vict. c. 21.

(*x*) *The Harton*, 9 P. D. 44; *The Monte Rosa*, (1893) P. 23, 30. In *The Swansea*, and *The Condor*, 4 P. D. 115, this question was considered but not decided.

(*y*) *The Ripon*, 10 P. D. 65.

(*z*) *The Fire Queen*, 12 P. D. 147; *The Talbot*, (1891) P. 184.

(4)) does not refer to regulations made under the power of sect. 421. By that section, however, it is enacted that such local regulations are to "be of the same force as if they were part of the collision regulations." Whether these words incorporate the penal provisions of sect. 419 is doubtful. In the case of so highly penal an enactment, it seems that express words are necessary to bring it into operation. The question is further complicated by the opening words of the collision regulations: "These rules shall be followed by all vessels upon the high seas, and in all waters connected therewith, navigable by sea-going vessels." Where, as in the case of the Humber and the Mersey, the local Act or rules expressly incorporate some or all of the collision regulations of the Merchant Shipping Act, 1894, it would seem that an infringement of any one of them so incorporated is an infringement of "the collision regulations" within the meaning of sect. 419 (4). There can, however, be no doubt that under the power given by sect. 418 (1) "to make regulations for the prevention of collisions at sea," those regulations are valid elsewhere than at sea (*a*), and therefore an infringement of them would, it is submitted, bring sect. 419 (4) into operation.

Power under sect. 418 to make the sea regulations apply elsewhere than at sea.

The other case where damages may be recovered without proof or existence of negligence on the part of the ship sued, is when she fails to stand by and assist the ship with which she has been in collision. By 57 & 58 Vict. c. 60, s. 422, it is enacted as follows:—

57 & 58 Vict. c. 60, s. 422. Presumption of fault where the ship fails to stand by and assist.

"(1.) In every case of collision between two vessels it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any)—

(a) To render to the other vessel, her master, crew, and passengers (if any), such assistance as may be practicable and as may be necessary to save them from any danger caused by the collision; and to stay by the other vessel until he has ascertained that she has no need of further assistance; and also

(b) To give to the master or person in charge of the other vessel the name of his own vessel, and of the port to which she belongs,

(*a*) *The Anselm*, (1907) P. 151 (regulations held to apply in the Para estuary of the River Amazon; Regulations—Preliminary).

and also the names of the ports and places from which she comes and to which she is bound.

"(2.) If the master or person in charge of the other vessel fails to comply with this section, and no reasonable cause for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect or default.

"(3.) If the master or person in charge fails without reasonable cause to comply with this section he shall be deemed guilty of a misdemeanor (*b*), and if he is a certificated officer an inquiry into his conduct may be held and his certificate cancelled or suspended."

"Standing by" was first made a statutory duty by 25 & 26 Vict. c. 63, s. 33 (*c*). Previous to that Act, however, the temptation for a ship to run away from another with which she has been in collision by her own fault, in the hope of escaping detection, as well as the duty of each ship after a collision to render assistance to the other, were distinctly recognized by the Admiralty Court. Failure, however, to stand by a ship injured in a collision was only punished by compelling the defaulting ship, although she was free from blame in other respects, and successful in the suit, to pay the costs of the suit (*d*).

However free from blame a ship may be in other respects, the law requires each to stand by the other. If either ship fails to do so, in the absence of proof to the contrary (*e*)—which depends purely on the facts of the case—she will be held to be in fault for the collision.

On whom the statute casts the duty to stand by.

The "person in charge" mentioned in sect. 422 is the master, unless at the time of the collision the ship is in charge of a compulsory pilot, in which case the owners are not liable for the subsequent misconduct of the master, because the exemption of the latter arises at the moment when the liability of the pilot for the collision attaches (*f*). If the master is below, the duty to stand by lies on the mate

(*b*) Punishable by fine of 100*l.* or imprisonment for six months: 57 & 58 Vict. c. 60, s. 6 (1).

(*c*) It was introduced into the statute by Lord Kingsdown. See *The Hannibal* and *The Queen*, L. R. 2 A. & E. 53, 56; 168 Hansard's Parl. Deb. 281.

(*d*) *The Celt*, 3 Hag. Ad. 321.

(*e*) For an example of a case in which the facts amounted to "proof to the contrary," see *The Tryst*, (1909) P. 333.

(*f*) *The Sussex*, (1904) P. 236; 9 Asp. 578, approving *The Queen*, L. R. 2 A. & E. 354.

or other person in charge of the deck, until the master comes on deck; if life or property is still in danger, it is then transferred to the master (*g*). Where a collision occurred between a ship in tow and a third ship, it was said by Sir R. Phillimore that the law required the tug to stand by the ships in collision (*h*).

What is reasonable cause for failure of stand by.

The penalty for not "standing by" is strictly enforced. A ship must obey the law although there is some risk to herself, and the other appears to be in no danger. A steamship was held in fault for not standing by, or sending a boat to, another with which she had been in collision, although, being in narrow waters, and herself of great length (450 feet), she could not do so without risk of going ashore, and although she had hailed another ship, better able to assist, to do so (*i*).

A barque was held in fault for not standing by, though her fore compartment to the collision bulkhead was full of water, and she was five or six feet by the head. The collision was in the channel, four or five miles from land, and the weather was bad (*k*).

Where the ship is unable literally to comply with the law, and, without fault on her own part, parts company with the vessel with which she has been in collision, those on board her must do their best to render assistance. In such a case, if the collision is at night, and she sees rockets or other signals of distress from the other vessel, it is her duty to return them by similar signals, or in any way within her power. In *The Emmy Haase* (*l*) a vessel so neglecting to return signals of distress was held in fault for the collision.

Failure to stand by does not affect right to salvage.

It would seem that the right of a ship to salvage remuneration, where she renders assistance to another with which she has been in collision by no fault of her own, is not

(*g*) *Ex parte Ferguson and Hutchinson*, L. R. 6 Q. B. 280.

(*h*) See *The Hannibal* and *The Queen*, L. R. 2 A. & E. 53; the three last-mentioned cases were decided under 25 & 26 Vict. c. 63, s. 33.

(*i*) *The Adriatic*, 3 Asp. M. C. 16. The present Act is more stringent than former Acts (25 & 26 Vict. c. 63, s. 33; 34 & 35 Vict. c. 110, s. 9). Other cases under the Act of 1862 are *The Lucia Jantina* and *The Mexican*, Holt, 130; *The Queen of the Orwell*, 7 L. T. 839; *The Eliza* and *The Orinoco*, Holt, 98. For the law in America, see *Boston Towboat Co. v. Winslow*, 76 Fed. Rep. 595.

(*k*) *The Valleyo*, Ad. Div. 27th April, 1887.

(*l*) 9 P. D. 81.

affected by the statute. It was so held in the case of a tug, whose tow was damaged in a collision with a third ship, for which the latter was in fault (*m*).

The "standing by" section of 25 & 26 Vict. c. 63, was held to apply in the case of a collision with an open fishing-boat (*n*). Collision with boat.

These enactments raising a statutory presumption of fault against (1) a ship which infringes the regulations, and (2) a ship which fails to render assistance, apply to all ships, whether British or foreign, and whether the collision occurs in British or foreign waters or on the high seas (*o*). There is no express decision on the point; but it was in several cases assumed that 36 & 37 Vict. c. 85, s. 17, applied to a British ship in collision with a foreign ship, whether in British waters (*p*) or on the high seas (*q*); and to a foreign ship (*r*) under the same circumstances. Both sect. 419 (4) and sect. 422 would probably be held to be rules of evidence or procedure, applicable to foreign ships as part of the *lex fori* (*s*). A Queen's ship was held in fault under 36 & 37 Vict. c. 85, s. 17 (*t*); but it is clear that sect. 419 (4) does not apply to a King's ship (*u*). Application of sects. 419 (4), 422, to foreign ships.

Enactments similar to these provisions of the Merchant Shipping Act are in force in several of the British colonies (*v*).

(*m*) *The Hannibal* and *The Queen*, L. R. 2 A. & E. 53.

(*n*) *Ex parte Ferguson and Hutchinson*, L. R. 6 Q. B. 280.

(*o*) *The Magnet*, L. R. 4 A. & E. 417. See *per* Sir R. Phillimore in *Reg.* v. *Keyn*, 2 Ex. D. 63, 85. The doubt expressed by the Privy Council in *The Fanny M. Carvill*, 2 Asp. M. C. 565, 569, appears to be not well founded. The question was raised in *The Koning Willem I.*, (1903) P. 114; but the facts rendered a decision unnecessary.

(*p*) *The Vera Cruz* (No. 1), 9 P. D. 88.

(*q*) *The British Princess* and *The Sedmi Dubrovaeki*, Ad. Ct. March, 1878; *The Englishman*, 3 P. D. 18; *The Voorwaarts* and *The Khedive*, 5 App. Cas. 876; and see *infra*, p. 206.

(*r*) *The Magdeburgh* and *The Henry Willard* (an American ship), Ad. Div. 16th Jan. 1885, where the collision was on the high seas; *The Love Bird*, 6 P. D. 80, where, from the name of the ship deemed to be in fault (*The Pansewitz*), it would seem that she was foreign. The collision was at the entrance to the Skager Rack.

(*s*) See as to this, pp. 199, 206, *infra*. In *Dowell* v. *General Steam Nav. Co.*, 5 E. & B. 195, sect. 28 of 14 & 15 Vict. c. 79, was held to be a rule of evidence. See further *infra*, p. 206, as to the application of these sections to foreign ships.

(*t*) *The Hochung* and *The Lapwing*, 7 App. Cas. 512.

(*u*) *H.M.S. Sans Pareil*, (1900) P. 267. In *The Astrakhan*, (1909) Fo. 129, the question was raised, but not decided, whether sect. 419 (4) applied to a vessel of war of the King of Denmark.

(*v*) Canada, 43 Vict. c. 29; see

In America there is no such law as sect. 419 (4) (*x*); but a recent Act of Congress (4th Sept. 1890) has enacted a "standing by" law similar to sect. 422.

Liability where ship deemed to be in fault under the statute.

Where a ship is deemed to be in fault under the statute, the owner will usually be liable at law, and the ship herself in Admiralty proceedings *in rem*. But where the infringement is proved to have been the act of persons who are not the owner's servants, the liability is not so clear. In such a case, if the ship is under charter or demise, it seems that the ship may be liable in proceedings *in rem* (*y*), while the owner is not liable at law. If the infringement is the act of a compulsory pilot, neither the ship nor her owners are liable (*z*). In *The Milan* (*a*) it was held, that fault presumed by law did not affect owners of cargo, so as to prevent them from recovering from the owners of the other ship (*b*).

But the statute affects with the usual consequences of negligence persons on board the ship deemed to be in fault, whose duty it was personally, or by their agents, to comply with the regulation which has been infringed. Thus, it was held that the master of a schooner brought up in the Mersey with one of her riding lights in an improper position was, under the statute, guilty of negligence contributing to the

The Clara Killam, 2 Quebec L. R. 56; *The Govino*, 6 Quebec L. R. 57; Queensland, 46 Vict. No. 12; South Australia, 44 & 45 Vict. No. 237; Victoria, 28 Vict. No. 255; New South Wales, 25 Vict. No. 7; New Zealand, 41 Vict. No. 54; Prince Edward's Island, 30 Vict. c. 13, s. 2.

(*x*) The Supreme Court has declared that it will not "accept blindly an artificial rule which is to determine in all cases whether the navigator is liable to the charge of negligence in causing any damage that may happen": *The Farragut*, 10 Wall. 334. But the burden is on a vessel which has infringed the regulations to prove that the infringement could not have contributed to the collision: *The Pennsylvania*, 19 Wall. 125; *The Ariadne*, 2 Bened. 472; *The Ice King*, 52 Fed. Rep. 894; *The Bolivia*, 49 Fed. Rep. 169; *The Jesse W. Knight*, 45 Fed. Rep. 590; *The Pennsylvania*, 12 Fed. Rep. 914; *The Providence*, 98 Fed. Rep. 133. If, however, such proof is forthcoming, a ship will recover full damages although she did not comply with the regulations: *Chamberlain* v. *Ward*, 21 How. 548, 567; *The Gray Eagle*, 9 Wall. 505; *The Continental*, 14 Wall. 345; *The Sunnyside*, 1 Otto, 208; *The City of Washington*, 2 Otto, 31. There are several decisions of the State of New York Courts to the same effect.

(*y*) See *The Lemington*, 2 Asp. M. C. 475; *The Tasmania*, 13 P. D. 110; *infra*, pp. 81 *seq.*

(*z*) *The Hector*, 8 P. D. 218; and see *ante*, p. 57.

(*a*) Lush. 388; decided under 17 & 18 Vict. c. 104, s. 298.

(*b*) This was so held before *Thorogood* v. *Bryan*, 8 C. B. 115, had been overruled by *The Bernina*, 13 App. Cas. 1.

collision; and that his widow, suing under Lord Campbell's Act, could not recover damages for his death (*c*).

Where a ship is deemed to be in fault under the statute, although there is no proof of negligence causing the collision, the rule of division of loss applies (*d*).

Rule of division of loss where ship deemed to be in fault.

(*c*) *The Vera Cruz* (No. 1), 9 P. D. 88. This case was reversed upon another point, 10 App. Cas. 59.

(*d*) *The Lapwing*, 7 App. Cas. 512; *The Khedive*, 7 App. Cas. 795; and see *infra*, p. 132.

CHAPTER III.

LIABILITY.

Persons liable: the actual wrong-doer.

THE person primarily liable in damages to the sufferer by collision is he by whose negligent act the loss was occasioned. The shipowner navigating his own vessel, the master, mate, pilot or other person in charge of the ship, who gave a wrong order to the helm (*a*), the helmsman who directed the ship's course wrongly, the seaman on the look-out who negligently failed to see and report the approach of the other vessel, may all be sued as wrong-doers, and are liable for damages (*b*).

Thus, when an action was brought against a pilot on board a King's ship for injury to the plaintiff's ship by the King's ship, it was held by Lord Kenyon that, though the pilot might be obliged to act in obedience to the order of the lieutenant in command of the King's ship, yet the pilot would be liable, if the collision happened by his personal misconduct. Upon proof, however, that the collision occurred by reason of an alteration of the helm ordered by the lieutenant, the plaintiff was non-suited (*c*).

Liability of master.

It has been said that the master is liable for the negligent and wrongful acts of his crew as well as for his own acts (*d*). His liability as carrier, unless specially limited, may extend so far; but in no reported case has he been held liable in tort

(*a*) See *Stort* v. *Clements*, 1 Peake, 107.

(*b*) *Stort* v. *Clements*, *ubi supra*; *Smith* v. *Voss*, 2 H. & N. 97; *Lawson* v. *Dumlin*, 9 C. B. 54, were actions against pilots. As to the practice of the Admiralty Division in personal actions, see below, p. 295.

(*c*) *Stort* v. *Clements*, 1 Peake, 107.

(*d*) Story on Agency, §§ 314—317; Molloy, l. 2, c. 3, s. 13. Cf. *Pilk* v. *Venore*, 1 Molloy, 359 (ed. 1769), as to the liability of the master for embezzlement by the crew. And in America it has been so held: *Denison* v. *Seymour*, 9 Wend. 9.

for wrongful acts of the crew (*e*). For wilful injury to another ship by pilot or crew he clearly is not liable (*f*).

As regards the responsibility of the master when a pilot is on board, whether by compulsion of law or by the master's or owner's choice, it seems clear that for a collision caused by the fault of the pilot the master is not answerable, if the pilot has been placed in charge of the ship properly and in the ordinary course of navigation (*g*).

No limitation of liability of the actual wrong-doer.

The statutory limitation of liability (*h*) does not apply to protect an owner, or a part owner, by whose actual fault or with whose privity the collision occurred. Such an owner is liable for full damages; and if the proceeds of the sale of the ship arrested, or if the statutory amount of the owner's liability, is insufficient to recompense the sufferer by the collision, the owner by whose actual fault or privity the loss was occasioned is liable for the deficiency (*i*).

In the case of a collision with one of his Majesty's ships, by the fault of those on board her, the actual wrong-doer is the only person against whom there is a right of action (*k*).

Liability of the ship-owner.

The actual wrong-doer, being commonly a seafaring man of small means, can seldom give adequate redress, and may be not worth suing. In such cases the substantial remedy is to be sought, either in Admiralty against the ship, or in a common law court against the employer of the actual wrong-doer. It will be convenient to consider his liability first (*l*).

(*e*) See *Aldrich* v. *Simmonds*, 1 Stark. 214; *Oakley* v. *Speedy*, 4 Asp. M. C. 134; *Blaikie* v. *Stembridge*, 6 C. B. N. S. 894. The contrary has been held in a Victorian Court: *Clancy* v. *Harrison*, 4 Victoria L. R. 437 (L.); *Staepoole* v. *Betridge*, 5 Victoria L. R. 302 (L.). During the sixteenth and seventeenth centuries, the master was almost always defendant in Admiralty suits for collision and other matters for which the ship was arrested; and on proof of negligence the sentence went against him personally.

(*f*) *Boucher* v. *Nordstrom*, 1 Taunt. 568; *McManus* v. *Crickett*, 1 East, 106.

(*g*) Kent's Comm. vol. 3, § 176. As to the respective duties of master and pilot, see below, p. 229.

(*h*) See below, p. 116, as to the statute limiting owner's liability.

(*i*) See *The Triune*, 3 Hag. 114. In this case (decided under 53 Geo. 3, c. 159), after decree condemning the owner (who intervened in the suit and his ship and freight, the ship was sold, and the proceeds were insufficient to pay the full amount of damages and costs. A monition was decreed against the owner, who was in charge of the ship at the time of the collision, to pay the deficiency, and, upon his failing to do so, he was attached.

(*k*) *Infra*, p. 91.

(*l*) Whether by the civil law the shipowner was liable for a collision caused by the fault of the master or crew seems to be a disputed point. Bynkershoek, Quæst. Jur. Civ. l. 4, c. 23, contends that he is not liable: *a* (*magistro*) *autem man-*

In most cases the owner of the ship is the employer of those on board and in charge of her, and is liable for their negligent acts. So generally is this the case that it has been held that, in the absence of proof to the contrary, those in charge of a ship will be presumed to be in the employment of her owners (*m*). And *primâ facie* the owners are the persons so described upon her register. But the register is not conclusive evidence of ownership; and if it is shown either that the actual owner is a different person from the registered owner, or that the registered owner is not the employer of the person causing the collision, the presumption as to the liability of the registered owner is rebutted.

The shipowner is liable, not *quâ* owner, but only as employer of the actual wrong-doer.

The liability for damage by a ship does not attach to her owner *quâ* owner. It is only as master or employer of the persons whose negligent act caused the damage that he incurs any liability. "The owner would not be liable merely because he was owner, or without showing that those navigating the vessel were his servants" (*n*).

The act complained of must be an act of the servant within the scope of his employment.

It is further necessary, in order to fix the shipowner with liability, that the negligent act complained of was an act of the servant acting within the scope of his employment. In the ordinary case of a collision occurring in the course of the employment of the ship for the owner's benefit no difficulty arises upon this point. But when the ship is employed in a manner not authorized by the owner the question arises whether those on board are acting within the scope of their employment by the owner. In an American case (*o*) where the defendant's servants, acting as volunteers, in shifting a

datum non est aliorum naves dolo vel culpâ obruere; quod si fecisset, ipse, quod dedit luat, non exercitor; so also Bynk. Observationes Jur. Rom. l. 4, c. 16. On the other hand, Voet, ad Pandect. 14, 1, 7, makes the shipowner liable: *quod si deliquerit (magister) si quidem in ipso officio cui erat propositus, dum forte datâ operâ vel culpâ atque imprudentiâ manifestâ in navigium alienum impegit suum . . . . exercitores ex quasi delicto teneri constat.* Huberi Prælect. Jur. Civ. 14, 1, 8; 3 Kent's Comm. 161; to the same effect. Cf. also *per* Ware, J., *The Rebecca*, Ware, 188; *The Phebe*, *ibid.* 263, 268. The *exercitor* (the person for whose benefit the ship was worked), and not the *dominus* (general owner), was generally liable for the acts of the master.

(*m*) See *Joyce* v. *Capel*, 8 C. & P. 370; *Hibbs* v. *Ross*, L. R. 1 Q. B. 534, and cases there cited; *Frazer* v. *Cuthbertson*, 6 Q. B. D. 93, 98; *Chasteauneuf* v. *Delange*, 7 App. Cas. 127; *Smith* v. *Bailey*, (1891) 2 Q. B. 403.

(*n*) *Per* Lord Cairns, C., *River Wear Commissioners* v. *Adamson*, 2 App. Cas. 743, 751; and *per* Lord Blackburn, *Simpson* v. *Thompson*, 3 App. Cas. 279, 293; *Hibbs* v. *Ross*, *ubi supra*.

(*o*) *Morrel* v. *Rheinfrank*, 24 Fed. Rep. 94.

scow, caused her to damage a canal boat, it was held that the defendants (who were dock owners coaling a steamer) were not liable.

Salvage service.

Where a master, without any instructions from his owner as to towing disabled ships, undertook to assist a disabled ship into port, and whilst attempting to get her in tow negligently ran into and injured her, it was contended that the owner was not liable, because the master in assisting the disabled ship was not acting within the scope of his employment. It was held that he was so acting, and that his owner was liable (*p*).

Owners not liable for wilful, malicious, and criminal acts of their servants.

Wilful, malicious, or criminal acts of the master and crew can seldom be within the scope of their employment so as to make the shipowner liable. Thus, for a collision caused by the master and crew maliciously driving their ship against another, the owner will not be liable (*q*). So where those on board a ship wilfully cut another ship adrift, and the latter suffered damage in consequence, it was held that the owners of the former were not liable at law, and that their ship could not be sued in Admiralty (*r*).

The following case shows that the decisions in these cases depend entirely upon the wrongful character of the act, and that casting adrift a craft alongside is not necessarily always wrongful. A flat alongside a steamship for coaling purposes was holed by a floating log, and reasonably expected to sink immediately. The mate of the steamship, for the safety of his own vessel, set the flat adrift, and the flat drove against a

(*p*) *The Thetis*, L. R. 2 A. & E. 365.

(*q*) *The Druid*, 1 W. Rob. 391; *McManus* v. *Crickett*, 1 East, 406; *Croft* v. *Alison*, 4 B. & Ald. 590. In *The Seine*, Sw. 411, this defence was pleaded. There is some difficulty in reconciling these with later cases (carriage accidents): *Limpus* v. *General Omnibus Co.*, 1 H. & C. 526; *Page* v. *Defries*, 7 B. & S. 137; but the character of the acts in the carriage cases is substantially different from that in the ship cases. In *Beard* v. *London General Omnibus Co.*, (1900) 2 Q. B. 530, where the conductor was driving, it was held that he was not about his owners' business. For an instance of a wilful attack upon another ship by a tug, see L. R. 1 A. & E. 64.

(*r*) *The Ida*, Lush. 6; the ship was foreign, and the collision was in a foreign river; and see as to this case, *per* Sir R. Phillimore, L. R. 3 A. & E. 47. Cf. *The Dunlossit*, (1897) App. Cas. 97; *Campbell* v. *Pennsylvania Rail. Co.*, 85 Fed. Rep. 462; *The Chickasaw*, 41 Fed. Rep. 627. In *Waltham* v. *Mulgar*, Moore, 776, the Admiralty Court was prohibited where it proposed to exercise jurisdiction in the case of a ship whose crew, against the owners' orders, had piratically seized another ship.

ship at anchor. The steamship owners were held in America not to be liable for damage to the anchored ship (*s*).

But owners are liable for the acts of their servants done in the course of their service and for their master's benefit, though no express command or privity of the owner be proved (*t*). And owners are answerable for the manner in which their servants navigate their ship, though the wrongful act of the servant is one against which the owners have given express orders (*u*).

Infringement of the regulations is a misdemeanour, and damage caused thereby is deemed to have been caused by the wilful default of the person in charge of the deck (*x*). But owners are not relieved from liability for the acts of their servants in such cases (*y*); nor are they the less liable because the negligence of their servants is criminal, and amounts to manslaughter (*z*).

Owner's liability where the ship is under charter.

Where a ship is being worked by a charterer or hirer, who appoints and pays the officers and crew under a charter-party or agreement which is in effect a demise of the vessel, the owner is not liable at law for damage she may do while in the possession of the charterer. But if the owner remains in possession, either by himself or his agents, he is liable, though the ship is under charter to another. Where a ship was chartered for six months at 20*l.* a week for the carriage of passengers and goods as the charterer should direct, he paying all disbursements and the wages of officers and crew, and the owners keeping the ship in repair, it was held that the owners were liable for a collision caused by the fault of those on board (*a*).

In *Dalyell* v. *Tyrer* (*b*), H., the lessee of a ferry, hired a tug with her master and crew to assist in working the ferry

(*s*) *The Chickasaw*, 41 Fed. Rep. 627.

(*t*) See *per* Willes, J., *Barwick* v. *English Joint-Stock Bank*, L. R. 2 Ex. 259, 265.

(*u*) *Limpus* v. *London General Omnibus Co.*, 1 H. & C. 526; *Betts* v. *De Vitre*, L. R. 3 Ch. 429.

(*x*) 25 & 26 Vict. c. 63, ss. 27, 28.

(*y*) It was so held under the provisions of a former Act: *The Seine*, Swab. 411. See also *Poulton* v. *London and South Western Rail. Co.*, L. R. 2 Q. B. 534; *Grill* v. *General Iron Screw Collier Co.*, L. R. 3 C. P. 476.

(*z*) See *The Franconia*, 2 P. D. 8, 163; *Reg.* v. *Keyn*, 2 Ex. D. 63.

(*a*) *Fenton* v. *Dublin Steam Packet Co.*, 8 Ad. & Ell. 835. The decision went upon the words of the charter-party; but it was proved that the owners had appointed and had power to dismiss the crew and officers.

(*b*) Ell. Bl. & Ell. 899.

for a day. A person who had contracted with H. for a season ticket was injured, whilst on board the tug, by the negligence of her crew, who were the owners' servants. It was held that he could recover against the owners, and that his right against them for the negligence of their crew was independent of his right against H. upon the contract.

It has been doubted whether the owners of a ship which is manned by a master and crew who are the owners' servants, but who by the charter-party are bound to obey the orders of a third person who is not the owners' servant, are liable at law for damage done by the ship while acting under the immediate orders of such third person. Upon principle it is difficult to see why the owners, by placing their servants under the control and orders of a third person, should escape liability for their wrongful acts. And in *Fletcher* v. *Braddick* (*c*) Sir J. Mansfield held the owners liable in such a case.

But where a vessel was one of a fleet of transports engaged in the service of the Government upon an expedition of war, it was held by Cockburn, C. J., that it was an incident to such an employment that all the vessels should obey the orders of those in command of the expedition; and that if one of them damaged another of the fleet, whilst acting in strict obedience to such orders, her owners would not be liable (*d*).

When a harbour corporation chartered a tug to tow ships to their dock, it was held that they were liable for its default whilst doing "corporation work" (*e*).

Where a Thames barge was lent by her owner to a person, who navigated her with his own men, it was considered clear by Best, J., that the owners were not liable for damage done by her (*f*).

The shipowners, or employers of the master or actual

Owner can recover over against actual wrong-doer.

(*c*) 2 Bos. & P. N. R. 182. This case is not satisfactory. The decision went partly upon the ground that the duty of the officer did not extend to seeing to the working of the ship. The officer was in the service of the Government who were the charterers. The case was, however, cited without comment by Sir J. Hannen in *The Tasmania*, 13 P. D. 110, 117.

(*d*) *Hodgkinson* v. *Fernie*, 2 C. B. N. S. 415. This statement of the law was approved by the Court.

(*e*) *The Ratata*, (1899) App. Cas. 513.

(*f*) *Scott* v. *Scott*, 2 Stark. 438; but it seems that in Admiralty she would be subject to arrest.

wrong-doer, by whose fault a collision occurs, can recover against him any damages which they have been compelled to pay, or any loss which they have suffered by his negligence (*g*).

Owner not liable for the negligence of one to whom the ship is demised.

It has never been held that the duty to use due care and skill which is incumbent upon every person in the conduct of that which, if misconducted (*h*), may be harmful to others, attaches to a shipowner whose ship is being navigated by a person who pays the owner for the use of her, but navigates her himself or by his servants (*i*). On the contrary, it seems clear that in such a case the shipowner is under no such duty, though his ship is chartered or hired for the purpose of navigation, and is in the course of employment for the owner's benefit. The duty above referred to attaches only to those who have the actual conduct of the ship and to their employers; if it attached to the owner *quâ* owner, it is clear that he could not free himself from it by contract (*k*); but, as stated above, mere ownership creates no liability for damage done by the ship (*l*).

Owner liable by statute for damage to pier, &c., by persons other than his servants.

By the Harbours, Docks, and Piers Act, 1847 (10 Vict. c. 27), s. 74, the owner of a ship which damages the harbour, dock, pier, quays, or works is answerable to the undertakers for the damage done by such ship, or by any person employed about her. This statutory liability is larger than the common law liability of the shipowner; for it exists whether the actual wrong-doer is his servant or not. The ship herself is also liable in Admiralty, and a maritime lien is, it seems, created by the statute for the amount of the damage (*m*). It has been held that, notwithstanding the words of the statute, the shipowner is not liable for injury to a pier by his ship in case of violent tempest or act of God (*n*).

(*g*) *Green* v. *New River Co.*, 4 T. R. 589; *Blewitt* v. *Hill*, 13 East, 13.

(*h*) As to this duty, see *per* Denman, C. J., *Mayor of Colchester* v. *Brooke*, 7 Q. B. 339, 377; *per* Lord Stowell in *The Dundee*, 1 Hag. Ad. 120; *per* Lord Blackburn in *The Voorwaarts* and *The Khedive*, 7 App. Cas. 795, 812; and *River Wear Commissioners* v. *Adamson*, 2 App. Cas. 743, 767.

(*i*) But the principle has been adopted in the Harbours, Docks, and Piers Act, 1847, mentioned in the next paragraph of the text, and in some local Docks Acts.

(*k*) *Hole* v. *Sittingbourne Rail. Co.*, 6 H. & N. 488; *per* Lord Blackburn, *Dalton* v. *Angus*, 6 App. Cas. 740, 820; *Bower* v. *Peate*, 1 Q. B. D. 321; *Hughes* v. *Pereival*, 8 App. Cas. 443.

(*l*) *Supra*, p. 64.

(*m*) See *The Merle*, 2 Asp. M. C. 402.

(*n*) *River Wear Commissioners* v. *Adamson*, 2 App. Cas. 743, over-

And the statute provides (sect. 74) that the shipowner shall not be liable where the damage was caused entirely by the fault of a compulsory pilot in charge of his ship.

Liability of persons other than owners;

The liability for damage done by a ship springing, as we have seen, not from ownership, but from the rule of law by which a man is liable for the wrongful acts of his agent acting within the scope of his employment, it is evident that, on the one hand, an owner may be liable, though the relation of master and servant does not exist between him and the person who does the mischief, and, on the other hand, that the principal or employer of the wrong-doer will be liable, whether he is also owner of the ship or not. A ship worked by a partnership is an instance of the latter case. Each member of the partnership is liable for the negligent acts of the other partners, and for the acts of agents of the partnership done in the course of the business of the partnership. In this case, unless the partner sued is an owner of the ship, it seems that his liability is unlimited (*o*).

of partners;

In *Steel* v. *Lester* (*p*) the actual owner, who was also registered as managing owner (*q*), had agreed with the skipper that the vessel should be worked entirely by him, the owner having no control over her, the crew to be engaged and the voyages to be determined at the absolute discretion of the skipper. The owner was to receive one-third of the net profits earned by the ship. It was held that, whether the skipper was the owner's servant, or his partner (*r*) in the adventure, navigating ship for the joint benefit of himself and the owner, the owner's liability for the collision was the same.

of charterer.

Where the person whose negligence causes the collision is the servant or agent of a charterer of the ship, the liability for damages falls on the charterer. But, except in the rare case of an actual demise of the ship, it seldom happens that the officers and crew are in the employment of the charterer

ruling *The Merle, ubi supra,* and *Dennis* v. *Tovell*, L. R. 8 Q. B. 10.

(*o*) See *infra*, p. 158.

(*p*) 3 C. P. D. 121.

(*q*) Under 38 & 39 Vict. c. 88.

(*r*) As to such an agreement not constituting a partnership, see *Barnard* v. *Aaron*, 31 L. J. C. P. 334. In *Webster* v. *Disharoon*, 64 Fed. Rep. 143, a very similar American case, it was held that the ship was liable *in rem*, but not the owner *in personam*. See also *The Phebe*, Ware's Reports, 263.

and not of the owner. When a ship is demised to a charterer, the charterer takes the benefit of the statute limiting shipowners' liability (*s*).

A person who contracts with a shipowner for the use of his ship, with her officers and crew, for a specified time or purpose, does not thereby become liable for the negligence of those on board her. Thus, where harbour commissioners contracted with a tug-owner that his tug should tow vessels into the harbour at a specified price, it was held that they were not liable for the negligence of the crew of the tug (*t*). As between charterer and owner, the former may be liable for damage to the ship by the negligence of those on board, whether they are his servants or not, by reason of the obligation arising out of the contract to return the ship in the condition in which he received her, wear and tear and accidents excepted (*u*).

Liability of the ship in Admiralty.

Thus far we have considered the liability at common law of the actual wrong-doer and of persons answerable for his acts. The injured person, we have seen, has at common law no lien upon the wrong-doing ship, but only a right of action against the person in fault, and, if he was the servant or agent of another, against his employer (*x*). We now proceed to discuss the liability in Admiralty of the ship by the negligent navigation of which the damage was occasioned. In dealing with this branch of the subject it is almost impossible to avoid personifying the ship and speaking of her as the actual wrong-doer. The habit is in some respects convenient and is inveterate, and it would be useless to struggle against it. But it must not be forgotten that in speaking of a ship as a wrong-doer or "in fault" for a collision, we are using a figure of speech which is apt to be misleading (*y*). There

(*s*) See *infra*, p. 158.

(*t*) *Cuthbertson* v. *Parsons*, 12 C. B. 304. And see the observations of Tenterden, C. J., in *Laugher* v. *Pointer*, 5 B. & C. 547, cited by Butt, J., in *The Quickstep*, 15 P. D. 196, 200.

(*u*) See *Coupé Co.* v. *Maddick*, (1891) 2 Q. B. D. 413.

(*x*) See *per* Lord Blackburn, *River Wear Commissioners* v. *Adamson*, 2 App. Cas. 743, 768.

(*y*) The judgment in *The Sisters*, 1 P. D. 117, is an instance of the confusion arising from the practice of personifying the ship. A collision occurred by the fault of those on board ship A. in driving another, B., to alter her course, so as to strike and injure a third ship, C. C. sued A., and in the judgment the action is thus described:—"The suit is not

are, indeed, to be found in the books cases which give some countenance to the doctrine that in Admiralty the ship is the real defendant; that the ship is sued, because it is she that has done the wrong, and she that pays the recompense. But it is submitted that this view of the liability of the ship in Admiralty is not well founded, and that at the present day it would not be followed. It probably would never have been put forward but for the loose language frequently used with reference to negligence in the conduct of ships, which attributes the negligence not to the persons who navigate, but to the ships themselves. The process of Admiralty Courts against the ship seems clearly to have originated, not in any such idea as that involved in the law of deodand (*z*) or in the noxal action of the civil law, but simply as a ready and effectual means of compelling the wrong-doer to appear and defend the action, or to make recompense (*a*).

Some countenance is lent to the doctrine that the ship is liable without regard to her ownership by cases (*b*) in which the shipowner has, by seizure and sale of his vessel in Admiralty, been held liable in damages for a collision caused by the fault neither of himself nor of his servants, but of persons in charge of his ship who were not his servants. Some of these cases have been reversed on appeal; but there is at least one (*c*) recent decision of the Court of Admiralty giving effect, at the expense of the innocent owner, to the principle that it is the ship that does the wrong. Whatever ground there may be for the opinion that by the maritime

brought against the actual wrong-doer, but it is brought against the vessel which caused the actual wrong-doer to do the wrong."

(*z*) In Holmes' Common Law, pp. 26 *seq.*, and an article, 10 American Law Review (p. 432), the writer suggests a connection between the liability of the ship in Admiralty and the law of deodand; and he refers to the *noxæ deditio* of the Roman law as embodying the same idea. For a curious case upon the law of deodand in connection with collision, see *Reg.* v. *Polwart*, 1 Q. B. 818, where it was held that the jury have no power to levy deodand where the collision is by fault amounting to manslaughter, though they have where there is mere negligence: Law Magazine, vol. 3, p. 188.

(*a*) See *per* Dr. Lushington in *The Mellona*, 3 W. Rob. 16; and the judgment of Gorell Barnes, J., in *The Ripon City*, (1897) P. 226, 240.

(*b*) *The Ticonderoga*, Swab. 215; *The Lemington*, 2 Asp. M. C. 475, and cases *infra*, pp. 81 *seq.* The opposite views as to the position of the owner of a ship proceeded against in the Admiralty Court will be found discussed in *The Mudlingar*, 26 L. T. 326, and *The Parlement Belge*, 5 P. D. 197, 217; *The Longford*, 14 P. D. 34.

(*c*) *The Lemington*, 2 Asp. M. C. 475. See this and other cases below, pp. 179 *seq.*

law it was the ship that did the wrong (*d*), and the ship that paid the recompense, the principles of the common law have so far prevailed in the Admiralty of this country, that it is at least doubtful whether at the present day, notwithstanding the case above mentioned, damages could be recovered in Admiralty against an innocent shipowner, where his liability depended only upon the supposed principle of the maritime law which fixes the fault upon the ship.

Upon this subject the language of Selwyn, L. J., in *The Halley* may here be quoted. "In cases like the present, where damages are claimed for tortious collisions, a chattel, such as a ship or carriage, may be, and frequently is, spoken of as the wrong-doer; but it is obvious that although redress may be sometimes obtained by means of the seizure and sale of the ship or carriage, the chattel itself is only the instrument by the improper use of which the injury is inflicted by the real wrong-doer" (*e*).

Again, in *The Parlement Belge* (*f*), Brett, L. J., delivering the judgment of the Court of Appeal, said:—"In a claim made in respect of a collision the property is not treated as the delinquent *per se*. Though the ship has been in collision and has caused injury by reason of the negligence or want of skill of those in charge of her, yet she cannot be made the means of compensation if those in charge of her were not the servants of her then owner, as if she was in charge of a compulsory pilot. This is conclusive to show that the liability to compensate must be fixed not merely on the property, but also on the owner through the property."

From the expressions used in these judgments, it would appear that the liability of the ship in Admiralty, and of the owner at common law, should always be concurrent. And in *The Druid* (*g*), Dr. Lushington said, that the liability of the ship and the responsibility of the owner were convertible terms. But unless we are to understand "owner" to mean

(*d*) Cf. *Anon.*, 1 Keb. 44, where the "misdemeanour of boat" is spoken of. Cf. Hopton c. a pink, Seld. Ser. Adm. ii. 79.

(*e*) *Per* Selwyn, L. J., in *The Halley*, L. R. 2 P. C. 193, 201. And see *The M. Moxham*, 1 P. D. 107, 111; *Simpson* v. *Thompson*, 3 App. Cas. 279, as to the necessity of determining who is "the actual wrong-doer."

(*f*) 5 P. D. 197, 218.

(*g*) 1 W. Rob. 391.

pro hâc vice owner, or in some sense other than that of general owner, the dictum of Dr. Lushington is not consistent with subsequent cases. It is clear that the ship may be liable in Admiralty where no damages could be recovered at law against the general owner (*h*).

Maritime lien for damages; its nature.

Before discussing further the cases in which the ship, as distinguished from her owners, is liable for collision, it will be convenient to consider the nature of the liability of the ship in Admiralty. This liability exists in the form of a lien or charge upon the ship, which arises in consequence of the collision in favour of the injured party. As a general rule, where a ship in the course of her employment for the owner's benefit, by the fault of those in charge, strikes or causes injury to (*i*) another ship, a charge for the amount of the loss attaches to her in favour of the sufferer. This charge or privilege, called a maritime lien, is enforced against the ship by an action *in rem* in Admiralty.

The proceedings in an action *in rem* commence with a writ of summons addressed to the owners and persons interested in the ship; this, unless the defendants have by themselves or their solicitors undertaken to give bail, which is the usual course, is followed by arrest (*k*) of the ship by the marshal of the Court. Thereupon the ship, with her gear and tackle, and the freight due, become security to the plaintiff for his damages and costs (*l*).

(*h*) *Infra*, pp. 81 *seq.*

(*i*) See *infra*, p. 76.

(*k*) The Valentinian Regulations, issued *circiter* A.D. 1336—1343, for the guidance of the Courts of the Sea at Valencia, contain provisions as to the execution of the sentence of the Court by arrest and sale of the moveable property of the defendant, including his ships. These provisions are in some respects similar to the existing process of the Admiralty; but there is no trace in them of a lien existing before arrest. See Black Book, Rolls' series, Vol. IV. pp. 475 *seq.* These Regulations are referred to by Mr. Justice Story in *De Lovio* v. *Boit*, 2 Gall. 398, as authority for the extent and character of Admiralty jurisdiction. Arrest of a defendant's property or person, to compel him to appear, *licet in jure civili nullum habet fundamentum*, was a practice which formerly extensively prevailed on the continent of Europe: Huberi Positiones juris, ii. 4; Hub. Prælectiones jur. civ., vol. 2, 88 *seq.*; and see Maine's Early History of Institutions, pp. 261 *seq.*

(*l*) Subject to the marshal's charges: *The Europa*, Br. & L. 210. The nature of proceedings *in rem* is fully discussed in the following cases: *The Bold Buccleuch*, 7 Moo. P. C. 267; *The Aline*, 1 W. Rob. 111; *The Mellona*, 3 W. Rob. 16; *The Nymph*, Swab. Ad. 86; *The Parlement Belge*, 5 P. D. 197; *The Orient*, L. R. 3 P. C. 696; *The Two Ellens*, L. R. 4 P. C. 161; *The Heinrich Bjorn*, 10 P. D. 44, at pp. 53, 54; *The Cella*, 13 P. D. 82; *The Ripon City*, (1897) P. 226; *Taylor* v. *Carryl*, 20 How. 583. It

The privilege or right of the injured party against the ship is inchoate from the moment of collision (*m*), and is carried into effect by proceedings in the Admiralty Division of the High Court or other Court having Admiralty jurisdiction. It is not limited to the owner's interest in the ship (*n*); nor is it displaced by a sale to a *bonâ fide* purchaser without notice (*o*), by the owner's death (*p*), or bankruptcy (*q*), or, if the ship is owned by a company, by a winding-up order against the company (*r*), or by a sale under the order of a foreign Court in which the proceedings are not *in rem* (*s*). The lien is not barred by, or in analogy to, the Statute of Limitations (*t*). The injured party must, however, take proceedings to enforce his right within a reasonable time, or he will lose the benefit of his lien (*u*), at any rate where there are circumstances which render its enforcement inequitable. Where the defendant ship was owned by a company, and many of the shares in the company had changed hands since collision, this was held not to constitute a sufficient change of interest to render the enforcement of

is doubtful whether the doctrine that collision gives rise to a lien is older than *The Bold Buccleuch*. In no earlier case is the doctrine explicitly stated. In Brown's Admiralty Law, vol. 2, p. 143, it is stated that "the torts of the master cannot be supposed to hypothecate the ship, nor in my humble judgment, in strictness of speech to produce any lien on it"; even for salvage the writer thought that there is no lien: *ibid.* p. 52. From Clerke's Praxis, tit. 24, 28, it appears that arrest of the defendant's ship (or other goods) was an alternative to arrest of the defendant's person, and was merely a means of compelling appearance. The early records of the Court show that it was not always the ship that did the damage that was arrested; any ship or goods belonging to her owner were equally liable to arrest; and also, as it seems, cargo on board the ship arrested. See next page, note (*d*).

(*m*) *The Bold Buccleuch*, 7 Moo. P. C. 267.

(*n*) See *per* Lord Watson, *The Dunlossit*, (1897) App. Cas. 97, 106; *The Two Ellens*, L. R. 4 P. C. 161.

(*o*) *The Bold Buccleuch*, 7 Moo. P. C. 267; *The Nymph*, Swab. 86; *The Mellona*, 2 W. Rob. 16.

(*p*) See *Phillips* v. *Homfray*, 24 Ch. D. 439, and cases there cited, as to an action at law in this case.

(*q*) *The Young Mechanic*, 2 Curtis, 404 (Amer. case).

(*r*) *In re Australian Direct Steam Navigation Co.*, L. R. 20 Eq. 325; *In re Rio Grande do Sul Steamship Co.*, 5 Ch. D. 282; *The Cella*, 13 P. D. 82.

(*s*) *The Charles Amelia*, L. R. 2 A. & E. 330.

(*t*) *The Kong Magnus*, (1891) P. 223. In America, *aliter*; *The Amboy*, 36 Fed. Rep. 925; and see *The Alaska*, 33 Fed. Rep. 107; *Witheojsky* v. *Wier*, 32 Fed. Rep. 301; *Seull* v. *Raymond*, 18 Fed. Rep. 547.

(*u*) In *The Europa*, 2 Moo. P. C. N. S. 1, the lien was held to be subsisting three years, and in *The Kong Magnus*, (1891) P. 223, eleven years, after the collision. In the latter case the ship had been in ports of the United Kingdom 47 times, in all 176 days, during the eleven years. See also *The Fairport*, 8 P. D. 48.

the lien inequitable (*x*). *The Bold Buccleuch*, which is the first reported case in which the damage lien was declared, though often questioned, has never been expressly dissented from, and has recently been approved by the House of Lords. The Admiralty law of Scotland was, in the same case, declared to be the same as that of England upon the question of the damage lien (*y*).

To what the lien attaches.

The lien attaches to the hull of the ship, and also to her tackle, apparel, and furniture. Thus her sails and rigging (*z*), and her equipment for a fishing voyage (*a*), have been held subject to it. But it does not attach to the wearing apparel of passengers on board her (*b*). The lien exists after the ship has been wrecked and broken in pieces, and it may be enforced against the fragments (*c*).

Cargo may be arrested to compel payment of freight.

Cargo on board the ship arrested forms no part of the *res* to which the lien attaches (*d*); but it is subject to arrest in order to compel the payment into Court of freight due to the shipowner (*e*); and if part has been discharged, the remainder will be released only upon payment of the whole of the freight (*f*); and when the ship is ordered to be sold, the Court will order the marshal to retain the cargo as security for the freight and charges, and, if no application be made, to sell such part as may be necessary to pay them (*g*). Such freight is part of the *res*, although the cargo in respect of which it is payable was not on board at the time of the collision, if the vessel arrested was in fact then engaged in earning it. Thus, where a ship was in collision on her outward voyage with a cargo on board for the owner's benefit, it

(*x*) *The Kong Magnus*, (1891) P. 223.

(*y*) *The Dunlossit*, (1897) App. Cas. 97.

(*z*) *The Alexander*, 1 Dods. 278.

(*a*) *The Dundee*, 1 Hagg. 109.

(*b*) *The William III.*, L. R. 3 A. & E. 487.

(*c*) *The Neptune*, 1 Hagg. 227, 238 (where the lien was for wages); *The Bold Buccleuch*, 7 Moo. P. C. 267. Dist. *The Annie*, 12 P. D. 50 (a case of life salvage).

(*d*) There is some evidence that formerly cargo in the wrong-doing ship was liable equally with the ship. See *Vogel* v. *Tomlinson*, Marsd. Ad. Cas. 314; and Bynkershoek, Quæst. Jur. Priv. l. iv. c. 20.

(*e*) *The Victor*, Lush. 72; *The Leo*, Lush. 444; *Nixon* v. *Roberts*, 1 J. & H. 739. As to arrest of cargo where no freight is due, see *The Flora*, L. R. 1 A. & E. 45. Art. 736 of the German Commercial Code provides for arrest of cargo for the same purpose.

(*f*) *The Roecliff*, L. R. 2 A. & E. 363.

(*g*) *The Gettysburg*, 5 Asp. M. C. 347. In that case the cargo was ordered to be kept for fourteen days before sale.

was held that the cargo which she was then under charter to bring home from the foreign port was liable to arrest (*h*). But where the freight has been paid, and the ship was subsequently, and before arrest, sold, it was held that the new owner was not liable beyond the value of the ship (*i*).

In what cases the lien arises.

There has been much discussion as to whether the damage lien attaches where the Admiralty Court has jurisdiction only by statute; whether in a particular case the right to proceed against a ship *in rem* under 3 & 4 Vict. c. 65, or under 24 Vict. c. 10, involves a maritime lien. It is clear that where no action lies *in rem* (*k*) there can be no lien. But there may be a proceeding *in rem* where no lien exists; as in the case of an owner or consignee of cargo carried into an English or Welsh port suing the ship for damage to the goods or for breach of contract (*l*) or other proceedings against the ship authorized by one of the above statutes (*m*).

Whether or no the lien attaches to a ship that, without being in collision herself, by her negligent navigation causes a collision between two other ships (*n*), has not been expressly decided. So, with regard to collisions within the body of a county, since the High Court of Admiralty had no jurisdiction in such cases, it has been doubted whether the damage lien attached, after the extension of the Admiralty jurisdiction to these localities by statute. It was pointed out by Mellish, L. J., in *The Two Ellens* (*o*), that there are strong grounds for holding that, since collision gave a maritime lien when it occurred upon the high sea, it was intended by the Acts which extended the jurisdiction that collision should also give a lien when it occurred within a county. In a

(*h*) *The Orpheus*, L. R. 3 A. & E. 308.

(*i*) *The Mellona*, 3 W. Rob. 16, 25.

(*k*) *E.g.*, for loss of life: *The Vera Cruz*, 10 App. Cas. 59; for cargo lost in a collision for which the carrying ship was alone in fault: *The Victoria*, 12 P. D. 105.

(*l*) *The Heinrich Björn*, 11 App. Cas. 276 (necessaries); *The Two Ellens*, L. R. 4 P. C. 161 (mortgage).

(*m*) *The Pieve Superiore*, L. R. 5 P. C. 482. In *The Patria*, L. R. 3 A. & E. 436, 459, Sir R. Phillimore appears to have assumed that there was a lien. *Sed qu.*

(*n*) As in *The Sisters*, 1 P. D. 117; *The Port Victoria*, (1902) P. 25; and other cases *supra*, p. 27. In America the lien has been held to arise in the case of a tug by whose fault her tow was forced into collision with a third ship: *The John G. Stevens*, 170 U. S. Rep. 113.

(*o*) L. R. 4 P. C. 161, 167; and *per* Lord Halsbury, C., in *The Sara*, 14 App. Cas. 209, 216. Cf. *The Zeta*, (1893) App. Cas. 468.

case where the collision was within the body of a county between the ship and the Liverpool landing-stage, Gorell Barnes, J., held that the lien attached (*p*). Probably, therefore, it attaches in all damage cases (*q*), whether the jurisdiction is that of the old High Court of Admiralty or statutory. That collision between ships is not a necessary condition of the lien follows from *The Veritas* (*supra*) and *The Zeta* (*r*). In the latter case the damage was to a ship by collision with a pier head; and it was contended that the case would not have been within the jurisdiction of the Admiralty before its extension by statute in 1840. Lord Herschell, C., says: "I cannot regard it as established that in the year 1840 its jurisdiction (*i.e.* of the High Court of Admiralty) in the case of damage received by a ship was limited to damage received by collision with another vessel. I can find no ground, either in principle or authority, for such a limitation." Conversely, damage done by a ship to objects other than ships may be sued for in Admiralty *in rem* (*s*), and will, it is conceived, give rise to a maritime lien (*t*).

There is a question whether, in the case of a collision in a

(*p*) *The Veritas*, (1901) P. 304. The learned judge doubted whether it was necessary to decide the point; but it appears to have been material; and there is an express decision "if it be material": *ibid.* p. 314.

(*q*) Including cases where the wrong-doing ship is not herself in collision. *The Dunlossit*, (1897) App. Cas. 97, does not contradict this.

(*r*) (1893) App. Cas. 468. See this case considered in *The Normandy*, (1904) P. 187. The gist of the matter seems to be tort done by a ship. See *The Sarah*, Lush. 549.

(*s*) In *The Swift*, (1901) P. 168, the damage was to an oyster bed; in *The Veritas*, *ubi supra*, to a landing-stage; in *The Clara Killam*, L. R. 3 A. & E. 161, and *The Czar*, 19 Lower Canada Jurist, 197, to a telegraph cable; in *The Excelsior*, L. R. 2 A. & E. 268, to a breakwater; in *The Albert Edward*, 44 L. J. Ad. 49, to a mooring dolphin; in *The Chase*, Stuart's V. Ad. Rep. 361, to a wharf. The records of the High Court of Admiralty show that suits have been entertained for collisions with a wear, a house, a wharf, a bridge, and a dredger: Selden, Ser. Admiralty, ii. p. lxxxii. In the United States the Admiralty jurisdiction appears to be more limited than it now is in England. In *The Blackheath*, 195 U. S. 361, the Supreme Court held that there was jurisdiction to entertain an action for damage by a ship to a beacon which was surrounded by the sea though affixed to the ground, for the reason that this was in its nature a maritime cause of action. But in the *Cleveland R. R.* v. *Steamship Co.*, 208 U. S. 316, the Supreme Court explained that the above case must not be taken to extend the jurisdiction beyond the facts of that case, and that the jurisdiction did not extend to damage to structures attached to the shore, such as a pier, in other words, this was not a maritime action. See also *The Poughkeepsie*, 162 Fed. Rep. 494.

(*t*) *The Veritas*, (1901) P. 304.

county between two non-seagoing lighters, there can be a damage lien (*u*).

Injury to pier or harbour works.

The liability created by 10 & 11 Vict. c. 27 upon a ship that injures a pier or harbour works involves a maritime lien (*x*).

Foreign ship detained for injury to British ship.

If a foreign ship injures a British ship, or property of a British subject, in any part of the world, she may be detained if found within three miles of the shore of the United Kingdom (*y*). A ship which has been so detained was, after an absolute appearance by her owners in Admiralty, held liable *in rem* for injury to a barge within the body of a county (*z*).

Priority of damage lien.

A plaintiff who obtains judgment in a damage action is entitled to enforce his lien to the exclusion of another damage claimant who institutes his action after judgment even on the same day (*a*). And the damage lien takes precedence of charges upon the ship arising out of contract, such as mortgages (*b*) and bottomry bonds, whether prior or subsequent to the collision in date (*c*), liens for wages, whether earned before or after the collision (*d*), liens for pilotage (*e*), salvage liens attaching before the collision (*f*), and probably the possessory lien of a shipwright for repairs (*g*). But it ranks after the claim of a bondholder who, after the collision and before arrest, without notice of the damage lien, advances upon bottomry money which is afterwards expended in repairs —so far, at least, as such claim relates to the increased value

(*u*) See *Purkis* v. *Flower*, L. R. 9 Q. B. 114; *Everard* v. *Kendall*, L. R. 5 C. P. 248.

(*x*) *The Merle*, 2 Asp. M. C. 402. This case was overruled upon another point by *River Wear Commissioners* v. *Adamson*, 2 App. Cas. 743.

(*y*) 57 & 58 Vict. c. 60, s. 688.

(*z*) *The Bilbao*, Lush. 149.

(*a*) *The Saracen*, 6 Moo. P. C. 56; *The Desdemona*, Swab. 158; and see *The Markland*, L. R. 3 A. & E. 340; *The Alne Holme* (first action), 4 Asp. M. C. 593.

(*b*) See *The Chieftain*, Br. & Lush. 104, 111; *The Ruby*, (1898) P. 52, as to the mortgagee's position.

(*c*) *The Aline*, 1 W. Rob. 111. It has been held in America that the damage lien takes precedence of the lien for necessaries supplied prior to the collision: *The John G. Stevens*, 170 U. S. Rep. 113.

(*d*) *The Benares*, 7 Not. of Cas. Suppl. p. 50; *The Linda Flor*, Swab. 309; *The Duna*, 5 L. T. 217; *The Elin*, 8 P. D. 39, 129; *The Chimæra*, cited 8 P. D. 46, 131, in all which cases, however, the ship was foreign.

(*e*) *The Benares*, *supra*. *Quære*, whether any such lien exists.

(*f*) *The Veritas*, (1901) P. 304.

(*g*) Precedence is given to a salvage lien over the shipwright's lien: *The Gustaf*, Lush. 506; *The Tergeste*, (1903) P. 26; but see *The Aline*, 1 W. Rob. 111. The shipwright's lien is not determined by arrest of the ship in a necessaries action: *The Acacia*, 4 Asp. M. C. 254; and takes precedence of wages earned after the ship is in a shipwright's possession for repair: *The Tergeste*, *supra*.

of the ship by reason of such repairs (*h*); and it probably ranks after a salvage lien attaching after the collision (*i*).

Order of claimants in several damage actions.

Where several claimants for damages in several actions *in rem* in respect of the same collision obtain successive judgments against the ship, their respective liens are enforceable against the ship in the order of the judgments (*k*). A plaintiff who institutes his action after another has been instituted, but before judgment, is entitled to damages rateably with the plaintiff in the earlier action (*l*).

Effect of a winding-up order or bankruptcy upon the damage lien.

In the case of a ship owned by a company in liquidation the damage lien will be enforced in priority to the claims of the general creditors. If all parties are before the Court, an order will be made in the liquidation for payment of the amount of the lien. But if parties interested in the ship, as mortgagees in possession, are not before the Court and cannot be brought before it, leave must be obtained in the winding-up to proceed in Admiralty. An arrest of the ship by the Admiralty Court after a winding-up order has been made is void, unless leave to proceed in Admiralty has been obtained in the winding-up (*m*).

In Ireland an injunction to restrain an Admiralty action *in rem* was refused by a Court of Bankruptcy, except upon payment into Court of the amount of the claim and an undertaking being given as to costs (*n*).

Bail takes place of ship arrested.

A ship will be released after arrest upon money being paid into Court or bail being given to an amount sufficient to satisfy the plaintiff's claim or equal to the defendant's

(*h*) *The Aline*, 1 W. Rob. 111. As to the ground of this decision, see *per* Parke, B., in *The Bold Buccleuch*, 7 Moo. P. C. 267, 285. And see *The St. Olaf*, L. R. 2 A. & E. 360, as to repairs without consent after arrest.

(*i*) See *The Selina*, 2 Not. of Cas. 18; *Cargo ex Galam*, Br. & Lush. 167; *Att.-Gen.* v. *Norstedt*, 3 Price, 97.

(*k*) *The Saracen*, 6 Moo. P. C. 56. As to a stay of proceedings in such a case to enable the defendant to limit liability, see *The Aline Holme* (first action), 1 Asp. M. C. 593.

(*l*) *The Clara*, Swab. 1. See *The Union*, Lush. 128, *infra*, p. 204, as to this being a *lex fori*.

(*m*) *In re Australian Direct Steam Navigation Co.*, L. R. 20 Eq. 325; *In re Rio Grande do Sul Steamship Co.*, 5 Ch. D. 282. See also *In re Traders' North Staffordshire Carrying Co.*, L. R. 19 Eq. 60, as to the right, after winding-up order, to sell a barge for tolls due before winding-up: and see also as to enforcing a necessaries lien in case of bankruptcy, *Halliday* v. *Harris*, L. R. 9 C. P. 668.

(*n*) *In re T. C.*, Ir. Rep. 11 Eq. 151. And see *The John and Mary*, Swab. 471.

liability (*o*). In such a case the money in Court, or the amount of the bail, takes the place of the ship, as a security for what may be recovered in the action, and, if the bail is sufficient, the ship herself is free (*p*). It has been held that, where the amount for which bail was given was insufficient to provide for damages and costs, the ship may be re-arrested to satisfy the damages (*q*) or costs (*r*). Where bail is given in an amount beyond the owner's statutory liability, the sum recoverable is, nevertheless, limited to the statutory amount (*s*). Where excessive bail is required the amount will be moderated upon an application to the Court (*t*), and in recent years the additional expense of procuring excessive bail has been ordered to be paid by the party requiring it (*u*).

Insufficient bail; further remedy against proceeds of ship.

Where after judgment in a damage action, in which bail for an insufficient amount had been given and the ship released, judgment was given against the same ship in an action for necessaries, and the ship was sold in the necessaries action and the money paid into Court, it was held that the plaintiffs in the damage action could not be paid out of the proceeds of the sale of the ship to the prejudice of the claimants in the necessaries action (*x*).

Assignment of lien.

The assignee of a right to proceed *in rem* for repairs is entitled to enforce his right against the ship, notwithstanding a composition deed executed by the assignor after the arrest of the ship; and although at the date of the assignment the ship was not under arrest, and the right of the assignor was inchoate only (*y*). It seems that the right of an assignee of a lien for damage would be the same.

(*o*) As to the practice touching bail, see Williams and Bruce, Ad. Pr. 3rd ed. pp. 291 *seq.*

(*p*) As to security to answer a counterclaim where the defendant's ship is not arrested, see *The Alne Holme* (second action), 4 Asp. M. C. 591; 24 Vict. c. 10, s. 34.

(*q*) *The Dictator*, (1892) P. 304, where the following cases were considered: *The Kalamazoo*, 15 Jur. 885; *The Volant*, 1 W. Rob. 383; *The Temiscouata*, 2 Sp. 208; *The Falk*, *infra*. *The Dictator* was followed in *The Gemma*, (1899) P. 285.

(*r*) *The Freedom*, L. R. 3 A. & E. 495; and see *The Flora*, L. R. 1 A. & E. 45.

(*s*) *The Duchesse de Brabant*, Sw. 264; *The Chieftain*, Br. & L. 104; *The Staffordshire*, L. R. 4 P. C. 194.

(*t*) *Owen* v. *The Providence*, Ad. Ct. 1766; Marsden's Ad. Ca. 13. See also *The Chieftain*, Br. & L. 104; *The Victor*, Lush. 72.

(*u*) As to commission on procuring bail, see *infra*, Ch. XIII.

(*x*) *The Falk*, 4 Asp. M. C. 592.

(*y*) *The Wasp*, L. R. 1 A. & E. 367. The principle of this decision does not appear to be affected by *The Heinrich Björn*, 11 App. Cas.

The lien for damage which attaches at the instant of collision (*z*) adheres to the ship until it is discharged by being satisfied, by laches (*a*) or in any other way in which by law it may be discharged (*b*). It seems that it may be enforced after the death or bankruptcy of the wrong-doer, or of the person liable at law for the acts of the wrong-doer, and, in the absence of laches, it is not barred by the Statute of Limitations or by lapse of time (*c*). Discharge of the lien.

From the above statement as to the nature of the maritime lien for damages, it will be seen that proceedings against the ship in Admiralty provide the sufferer by collision with a remedy in many cases where he would otherwise be without redress; as where the owners of the wrong-doing ship are resident abroad, dead, or bankrupt, or for other reasons cannot be sued personally.

The question referred to above, namely, whether the ship may be liable in proceedings *in rem* where the collision is not caused by the fault of the owner or his agents, and where, consequently, he could not be made liable at law, has arisen in several cases. In *The Druid* (*d*), Dr. Lushington said, that the liability of the ship and the responsibility of the owner were convertible terms. And in some later cases the liability of the ship and the responsibility of the owners have been spoken of by the Privy Council as if they were always concurrent (*e*). In a case before the Court of Appeal it was expressly said that "the liability to compensate must be fixed not merely on the property but on the owner through Whether the ship may be liable where the owner is not.

270. As to assignment of the lien, see *The Merle*, 2 Asp. M. C. 402; *The New Eagle*, 4 Not. of Cas. 426; *The Janet Wilson*, Swab. 261; *The Louisa*, 6 Not. of Cas. 531.

(*z*) *The Bold Buccleuch*, 7 Moo. P. C. 267; *The Mary Ann*, L. R. 1 A. & E. 8, 11.

(*a*) See *per* Mellish, L. J., *The Two Ellens*, L. R. 4 P. C. 161, 169.

(*b*) It is discharged by sale of the *res* under process of the Court: *The Saracen*, 2 W. Rob. 451; by payment and acceptance of the amount of the claim: *The William Money*, 2 Hag. 136. As to whether acceptance of bail, where the amount of bail is insufficient to recompense the sufferer, discharges the lien, *The Kalamazoo*, 15 Jur. 885, and *The Dictator*, 1892 P. 304, seem in conflict.

(*c*) See *per* Mellish, L. J., L. R. 4 P. C. 170; *The Kong Magnus*, (1891) P. 223; 7 Asp. M. C. 64.

(*d*) 1 W. Rob. 391. It appears from *The Tasmania*, 13 P. D. 110, 116, that in the opinion of Sir J. Hannen, by "owners" Dr. Lushington meant to include charterers.

(*e*) *The Diana, Stuart* v. *Isemonger*, 4 Moo. P. C. 11, 19; *The Amalia*, 1 Moo. P. C. N. S. 171, 484; *The Halley*, L. R. 2 P. C. 193; *The Orient*, 3 P. C. 696, 703; *The M. Moxham*, 1 P. D. 107.

the property" (*f*). On the other hand there are decisions in Admiralty holding the ship liable where the owner could not be sued at law (*g*).

Ship in hands of agent for sale.

Thus where a yacht was placed by her owners in the hands of an agent for sale, and whilst in his possession, and owing to his negligence in not striking her top gear, she drove from her moorings and injured another ship, it was held that the yacht was liable. The proceedings being *in rem*, Dr. Lushington said that the common law doctrine as to the non-liability of her owner for the negligence of an independent contractor had no application (*h*). At common law the owner would not be liable in such a case (*i*).

In *The Dunlossit* (*k*) the crew of a ship moored between two others, for their own safety and to escape probable damage in bad weather, cut the moorings of a ship alongside in order to escape to sea. It was held by the House of Lords that, assuming the act to be wrongful, the ship was not thereby subjected to a maritime lien. So in *The Utopia* (*l*) the Privy Council held that a sunken wreck, which by the fault of the harbour authority, and not of her owners, was unlit, and damaged a vessel that struck on it, was not subject to a maritime lien or liable *in rem*. Referring to the opinion of Lord Watson as to the character of the damage lien expressed in *The Castlegate* (*m*), Sir F. Jeune, delivering the judgment of the Privy Council, said (*n*): "The foundation of the lien is the negligence of the owners or their servants at the time of the collision, and if that be not proved, no lien comes into existence, and the ship is no more liable than any other pro-

(*f*) *Per* Brett, L. J., *The Parlement Belge*, 5 P. D. 197, 218.

(*g*) Besides the cases mentioned below, it was so held in *The Neptune the Second*, 1 Dods. Ad. 467; and *The Girolamo*, 3 Hag. Ad. 169, where the vessel was condemned for the fault of a compulsory pilot. These decisions were, however, not followed in subsequent cases: see *The Protector*, 1 W. Rob. 45; *The Maria*, *ibid.* 95. Cf. *The Longford*, 14 P. D. 34; *The Ripon City*, (1897) P. 226.

(*h*) *The Ruby Queen*, Lush. 266; *The Orient*, L. R. 3 P. C. 696; followed in *Baker* v. *Power*, 14 Fed. Rep. 483, where a ship under repair on a shipwright's slip broke away and injured another afloat.

(*i*) See *per* Lord Blackburn, *River Wear Commissioners* v. *Adamson*, 2 App. Cas. 743, 768; *Eglington* v. *Norman*, 46 L. J. Ex. 557 (overruled on another point by *The Crystal*, (1894) App. Cas. 508).

(*k*) (1897) App. Cas. 97.

(*l*) (1893) App. Cas. 492.

(*m*) (1893) App. Cas. 38, 52.

(*n*) (1893) App. Cas. 499.

perty which the owners at the time of the collision may have possessed."

Where a vessel was chartered to the French Government, and whilst in tow of a steamship, which the charterers ordered her to employ, by the fault of the steamship, went foul of a third vessel, Dr. Lushington held that, the proceedings being *in rem*, the maritime lien for damage attached, notwithstanding any prior contract between the owner and a third party. "It is impossible," he said, "that because a person has entered into a voluntary contract by which he is finally led into mischief, that that can relieve him from making good the mischief which he has done." And he said that this was the case though the ship has been demised by the owner to another who has the appointment of the master and crew (*o*). Ships under charter.

The case here anticipated by Dr. Lushington afterwards came before Sir R. Phillimore, and was decided in accordance with the above opinion of Dr. Lushington. In *The Lemington* (*p*) the vessel was chartered by her owners to a person upon terms by which the charterer had the sole and absolute management of her and the appointment of her crew. The charterer was to pay all expenses connected with the ship, and her owners were to receive one-fifth of her gross earnings. It was held that the ship was liable in proceedings *in rem*. Sir R. Phillimore said:—

"A vessel placed by its real owners wholly in the control of charterers or hirers, and employed by the latter for the lawful purposes of the hiring, is held by the charterers as *pro hâc vice* owners. Damage wrongfully done by the *res* while in possession of the charterers is therefore damage done by the owners or their servants, although those owners may be only temporary. Vessels suffering damage from a chartered ship are entitled, *primâ facie*, to a maritime lien upon that ship, and look to the *res* as a security to the restitution. I cannot

(*o*) *The Ticonderoga*, Swab. Ad. 215. "There is nothing in this judgment which leads to the conclusion that Dr. Lushington intended to retract what he said in *The Druid*:" *per* Sir J. Hannen, *The Tasmania*, 13 P. D. 110, 117. See also a dictum of Dr. Lushington in *The Mellona*, 3 W. Rob. 16, 21, as to the liability of the ship without regard to the question whether the owners, at the date of the arrest, were the owners at the date of the collision.

(*p*) 2 Asp. M. C. 475.

see how the owners of the *res* can take away that security by having temporarily transferred the possession to third parties. A maritime lien attaches to a ship for damage done through the negligence of those in charge of her, in whosesoever possession she may be, if that damage is inflicted by her whilst in the course of her ordinary and lawful employment, authorized by her owners. Whether the damage is done through the default of the servants of the actual owners, or of the servants of the chartered owners, the *res* is equally responsible, provided that the servant making default is not acting unlawfully or out of the scope of his authority" (*q*).

The liability of the owner in this case has been compared to that of the holder of a bottomry bond executed before a collision for which the ship is in fault. In such a case the damage lien takes precedence of the bottomry lien. The bondholder is, "so to speak, a part owner in interest at the date of the collision, and the ship in which he and others are interested is liable to its value at that date (of the collision) without reference to his claim" (*r*).

The Tasmania. The liability of the ship, as distinguished from that of the owner, was discussed in *The Tasmania* (*s*). The conclusion arrived at in that case by Sir James Hannen was, that the damage lien is not absolute; that it does not arise upon the mere fact of collision through the negligence of those on board; that it arises only where "the navigators can be identified with the owners or their agents;" and that by the maritime law, "charterers to whom the government of the ship is voluntarily handed over, represent the owners so as to bind the ship." There is, he said, a *primâ facie* liability of the ship, which may be rebutted by showing that the

(*q*) The charterer of a ship in the situation of *The Lemington*, *supra*, p. 83, is held to be entitled to owner's salvage reward: *The Scout*, L. R. 3 A. & E. 512; but the actual owner is entitled to owner's salvage where, notwithstanding the charter, the ship remains in his or his agent's possession: *The Collier*, L. R. 1 A. & E. 83; *The Waterloo*, 2 Dods. Adm. 433. In France it seems that a ship in the position of *The Lemington* is liable to the sufferer by collision as "guarantie speciale": Manuel de Droit Commercial, par P. Bravard Veyrières, 7th ed. par Ch. Demangeat, p. 343; and in America the wrong-doing ship is liable, without regard to her ownership, except in the case of a ship in tow; *The Arturo*, 6 Fed. Rep. 308.

(*r*) *Per* Jervis, C. J., *The Bold Buccleuch*, 7 Moo. P. C. 267, 285. Cf. the liability of the ship for wages of a crew not employed by her owner, *Wells* v. *Osman*, 2 Raym. 1044.

(*s*) 13 P. D. 110.

injury was done by the act of someone navigating the ship not deriving his authority from the owners; and by the maritime law, charterers in whom the control of the ship has been vested by the owners are deemed to have derived their authority from the owners so as to make the ship liable for the negligence of the charterers who are *pro hâc vice* owners. From these premises he drew the conclusion, that whatever is a good defence for the charterers against the claim of the injured person is a good defence for the ship, as it would have been if the same defence had arisen between the owners and the injured person.

The facts of the case to which Sir James Hannen applied these principles were these:—The plaintiff, the owner of the smack *Striver*, sued the tug *Tasmania*, *in rem*, for sinking the smack whilst towing her into Yarmouth harbour. The collision was caused entirely by the fault of the master of the tug. *The Tasmania* was owned by one Watkins, and she was chartered by the Great Yarmouth Steam Tug Company at 30*l.* per week, the charterers finding a captain and the owners the crew. The plaintiff, who was a director of the Tug Company, had been in the habit of employing the company's tugs to tow his smacks upon terms published by the company, one of which was that the company were not to be liable for damage to smacks when in tow of their tugs. It was held that the plaintiff employed *The Tasmania* upon the terms published by the company with reference to their own tugs; that in contracts made upon the published terms there was necessarily implied an agreement that the tug should not be liable *in rem*: and that consequently *The Tasmania* was not liable *in rem*, no damage lien having arisen.

Having regard to the above decisions, it seems that, notwithstanding *dicta* to the contrary, a person injured by a collision can in some cases recover against the owner of the ship that has done the damage by proceedings in Admiralty *in rem* where he could not recover at common law. But the exact liability of the ship, apart from the question of ownership, cannot yet be considered as settled.

The liability of the ship (as distinguished from the

In America, the liability of the ship, as distinguished from the personal liability of the owner, has been carried further than it has ever been carried by the Courts of this country.

owner) in American law.

In a case before the Supreme Court (*t*), Story, J., quoted with approval the following passages from a judgment of Marshall, C. J. :—"This is not a proceeding against the owner; it is a proceeding against the vessel for an offence committed by the vessel." And again, he says :—"The thing is here primarily considered as the offender, or rather the offence is primarily attached to the thing." So Brown, J., in the Supreme Court :—"The ship itself is to be treated in some sense as a principal, and as personally liable for the negligence of anyone who is lawfully in possession of her, whether as owner or charterer" (*u*). This, it will be observed, is not the view taken by the Courts of this country (*x*).

Ship affected by the fault of persons for which the owner is not answerable.

An instance of the ship being affected by the fault of those on board, for which her owners are not liable at law, occurs where a collision is caused by the fault of both ships, and the fault of one of them is the fault of her compulsory pilot. In this case her owners can recover half, but only half, their loss against the other ship and her owners (*y*); and that only subject to the rule, usual in such cases, of having to bear their own costs (*z*). The fault of the pilot affects the ship to this extent—that it brings into operation the rule as to division of loss; but it would seem not to be contributory negligence such as would affect the owners at law (*a*).

By the maritime law ship and owners liable for negligent navigation.

By the maritime law, as administered in the Admiralty of this country, the owners of a ship that negligently damages another on the high seas are liable for the negligence of their servants on board such ship, and the damage lien attaches to the ship. Thus Lord Stowell, in *The Dundee* (*b*), said that "negligent navigation causing damage to another ship the

(*t*) *The Malek Adhel*, 2 How. 210, 234.

(*u*) *The Barnstable*, 181 U. S. Rep. 464, 467.

(*x*) In America the ship is liable for the master's contracts in cases where she would not be liable by English law. Upon the question whether the owners of a chartered ship are liable in proceedings *in rem* for "torts committed by the ship," the Supreme Court was equally divided in *Thorp* v. *Hammond*, 12 Wall. 408. See also *The Clarita* and *The Clara*, 23 Wall. 1; *The Barnstable*, *supra*; *Workman* v. *Mayor, &c. of New York*, 179 U. S. Rep. 552.

(*y*) *The Hector*, 8 P. D. 218.

(*z*) *The Hector*, 8 P. D. 218; *The Rigbords Minde*, 8 P. D. 132.

(*a*) See *Spaight* v. *Tedcastle*, 6 App. Cas. 217; *The Adam W. Spies*, 70 L. J. Ad. 25.

(*b*) 1 Hag. 109, 120.

maritime law considers as a dereliction of bounden duty, entitling the sufferer to reparation in damages. . . . The ancient general law exacted a full compensation out of all the property of the owners of the guilty ship, upon the common principle applying to persons undertaking the conveyance of goods (*c*), that they were answerable for the conduct of the persons whom they employed, and of whom the other parties who suffered damage knew nothing, and over whom they had no control. To this rule our own country conformed" (*d*). It is the maritime law, and not the law of the flag, that governs in such a case. Thus, where the owners of a cargo on board a ship sailing under the Dutch flag sued the owners of another Dutch ship for loss of cargo in a collision on the high seas caused by the fault of the latter ship, it was held that the Dutch law (by which, it was alleged, the owners of the wrong-doing ship were not liable) was not applicable to the case (*e*).

Neither ship nor owners liable for fault of a compulsory pilot.

Notwithstanding some early decisions to the contrary, it is now settled that where a collision is caused by a pilot placed in charge of a ship by the law, the fault of the pilot does not affect the ship so as to make her liable in Admiralty, nor are the owners answerable for the pilot's negligence at law. This exemption of a ship and her owners from liability for her pilot's negligence is (it is believed) almost peculiar to English law. It is the result of modern legislation, and of a rigid adherence to the principles of the common law in a matter which seems peculiarly to belong to the maritime law. The subject is fully dealt with below in Chapter X.

Liability for damage by a ship ashore, sunk, or abandoned.

Owners are not liable for damage caused by a ship which they have abandoned, if the abandonment was justifiable. But if the abandonment, though necessary for the safety of those on board, was the result of negligence for which the owner is responsible, it seems that he remains liable notwith-

(*c*) "I should rather say undertaking the management of anything likely to do mischief, unless attention and vigilance is used by those who manage it;" *per* Lord Blackburn, *Stoomvaart Maatschappy Nederland* v. *P. & O. Steam Navigation Co.*, 7 App. Cas. 795, 812.

(*d*) See also *The Ticonderoga*, Swab. 215; *The Mellona*, 3 W. Rob. 16, 21; *The Leon*, 6 P. D. 148.

(*e*) *Chartered Mercantile Bank of India, London, and China* v. *Netherlands India Steam Navigation Co.*, 10 Q. B. D. 521.

standing the abandonment (*f*). So long as a ship remains in the owner's possession he is liable for damage to another ship striking her, though she is sunk or ashore, if such damage was caused by the absence of proper lights or precautions on his part.

It has been held to be the duty of those in charge of a vessel sunk in a fairway to mark her position with a buoy or in some other way (*g*), and if in a tideway with a buoy that will watch (*h*). But if the owner or person in possession of the wreck proves that the wreck, though unmarked and unlit, was so through no negligence on his part, he is not liable. Thus, in *The Douglas* (*i*), it being proved that notice of the wreck had been given to the river authority having power to remove wrecks, it was held that the owner was not liable for a collision caused by the wreck being unlit. In such cases the owners of the wreck can, without abandoning their property in the wreck, relieve themselves of the duty to light and mark the wreck by giving notice to those upon whom that duty is cast by the law; or to the local authority assuming or apparently having power to deal with the wreck (*k*). In America it has been held that there is no duty upon a tug to mark a barge that sank whilst in tow (*l*).

The law upon this subject was thus stated by the Privy Council (*m*): "The result of these authorities (*Brown* v. *Mallet*, *White* v. *Crisp*, *The Douglas*) may thus be expressed. The owner of a ship sunk, whether by his default or not (wilful misconduct probably giving rise to different considerations), has not, if he abandon the possession and

(*f*) *Brown* v. *Mallet*, 5 C. B. 599; *White* v. *Crisp*, 10 Ex. 312. These cases were decided on demurrer, and some doubt was thrown upon them in *The Douglas*, 7 P. D. 151. See also *Rex* v. *Watts*, 2 Esp. 675; *White* v. *Phillips*, 15 C. B. N. S. 245; *Dimes* v. *Petley*, 15 Q. B. 276. As to the non-liability of the owner of a sunken ship after abandonment, for expenses of removing her, see *The Crystal*, (1894) App. Cas. 508, overruling *Eglington* v. *Norman*, 46 L. J. Ex. 557. *Smith* v. *Wilson*, 8 Asp. M. C. 197, is a decision upon a colonial Act upon the same subject.

(*g*) *Harmond* v. *Pearson*, 1 Camp. 515; *Hancock* v. *York, &c. Rail. Co.*, 10 C. B. 348; *Gilbert* v. *Corporation of Trinity House*, 17 Q. B. D. 795 (damage by stump of beacon); *The H. S. Nichols*, 53 Fed. Rep. 665.

(*h*) See *Jolliffe* v. *Wallasey Local Board*, L. R. 9 C. P. 62.

(*i*) 7 P. D. 151.

(*k*) *The Utopia*, (1893) App. Cas. 502.

(*l*) *Worth* v. *Steam Tug William Murtagh*, 6 Fed. Rep. 192. Cf. *The Swan*, 3 Blatchf. 285.

(*m*) *The Utopia*, (1893) App. Cas. 492, 498; followed in *The Snark*, (1900) P. 105.

control of her, any responsibility either to remove her or to protect other vessels from coming into collision with her (*n*). It is equally true that so long as, and so far as, possession, management, and control of the wreck be not abandoned or properly transferred, there remains on the owners an obligation as regards the protection of other vessels from receiving injury from her. But in order to fix the owners of a wreck with liability, two things must be shown: first, that in regard to the practical matters in respect of which default is alleged, the control of the vessel is in them, that is to say, has not been abandoned, or legitimately transferred; and, secondly, that they have in the discharge of their legal duty been guilty of wilful misconduct or neglect."

If the owner of a sunken wreck does not abandon her, and employs an "independent contractor" to raise her, he does not thereby escape the obligation of seeing that she is properly lit. The principle, which is the same on water as on land, is that where a person employs a contractor to do work in a place where the public are in the habit of passing, which work will, unless precautions are taken, cause danger to the public, an obligation is thrown upon the person who orders the work to be done to see that the necessary precautions are taken (*o*).

Damage by unbuoyed anchor.

Before the days of floating docks, damage to ships by grounding upon unbuoyed anchors in the Thames and elsewhere was a very frequent cause of action (*p*). The ship whose anchor was unbuoyed was invariably found in fault; and "ordinances" of the Admiralty—which appear to have been presentments of juries at Admiralty sessions—were issued against leaving anchors unbuoyed. In an American case (*q*), it was held that in ordinary anchorage ground it is not necessary to buoy the anchor.

In America it has been held that no liability attached to a

(*n*) Cf. *Ball* v. *Berwind*, 29 Fed. Rep. 541, where the owners were under obligation to raise the wreck, although abandoned.

(*o*) *Per* Bruce, J., *Penny* v. *Wimbledon Urban Council*, (1898) 2 Q. B. 212, cited by Smith, L. J., in *The Snark*, (1900) P. 105, 110.

(*p*) *Tills* v. *The Mary*, Marsd. Ad. Cas. 284, is an instance.

(*q*) *Baxter* v. *International Contracting Co.*, 65 Fed. Rep. 250.

tug for damage caused to a third ship by her tow, which had been sunk without fault on the part of the tug (*r*).

Damage to a sunken ship.

The duty of a ship under way to avoid doing damage to a sunken ship, or to a ship ashore, is the same as in the case of a ship at anchor. But unless the masts (*s*) or some part of the wreck is above water, and, at night, properly lit, or the ship under way is in some way warned of the presence of the wreck, no presumption of fault would, it is conceived, arise against the ship under way.

The liability of a dock, harbour, or river authority with power to remove wrecks for damage by a wreck is considered below (*t*).

Liability of dock or harbour authority.

The principle which exempts a ship and her owners from liability where the damage results entirely from the negligence of a compulsory pilot in charge of her, applies equally where the ship is being navigated under the orders of a dock or harbour master empowered by the Legislature to direct the movements of vessels within his dock or harbour (*u*). In such cases the dock or harbour master is liable; and the dock or harbour authority would, it seems, also be liable (*x*). The liability would be the same, whether the dock or harbour authority was a corporation or body trading for profit, or whether it merely had power to levy tolls and apply them towards the maintenance and improvement of the dock or harbour (*y*). Thus, for a collision in a dock caused by the improper influx or withdrawal of water, improper berthing of ships, or negligence of a dock master in regulating the movements of a vessel in the dock, damages might, it seems, be recovered against the proprietors or trustees of the dock (*y*).

It is doubtful whether harbour and lighthouse authorities,

(*r*) *The Swan*, 3 Blatchf. 285. Cf. *Worth* v. *The William Murtage*, 6 Fed. Rep. 192.

(*s*) As in *The Edwin Hawley*, 41 Fed. Rep. 606.

(*t*) Pp. 92 *seq.*

(*u*) See *The Cynthia*, 2 P. D. 52; *The Mystery*, (1902) P. 115; *The Excelsior*, L. R. 2 A. & E. 268. Cf. *Edwards, Robertson & Co.* v. *Falmouth Harbour Commissioners, The Rhosina*, 10 P. D. 24, 131; *Reney* v. *Magistrates of Kirkcudbright*, 7 Asp. 221.

(*x*) To the extent defined by 63 & 64 Vict. c. 32, *infra*, p. 153.

(*y*) See *Mersey Docks and Harbour Board* v. *Gibbs*, L. R. 1 H. L. 93; *The Excelsior*, L. R. 2 A. & E. 268, 270. *Aliter* (*semble*) in the case of unpaid trustees of a dock or navigation having no power to levy tolls: *Forbes* v. *Lea Conservancy Board*, 4 Ex. D. 116.

having power under 40 & 41 Vict. c. 16, to remove vessels sunk in harbours or waters within their jurisdiction, are liable for injury sustained by a vessel striking against a wreck which they have neglected to remove. In *The Douglas* (*z*), Brett and Cotton, L. JJ., suggested that they might be liable in such a case; but in a subsequent case (*a*), Kay, J., declined to follow this suggestion, though upon other grounds he held that in the case before him the harbour authority was liable (*b*).

Omission by harbour authority to remove wreck.

Questions as to the liability for the expense of removing sunken wrecks have arisen in recent cases (*c*); in each case the matter mainly depended upon the construction of statutes.

The duty of harbour authorities and wharfingers to take reasonable care to see that a berth to which a vessel comes is in a proper condition has been the subject of several modern cases. Thus in *The Moorcock* (*d*) the duty of a wharfinger was held to extend to warning ships using his wharf of the uneven character of the river bed alongside his wharf. In this case the river bed was not in the wharfinger's possession or under his control. In *The Bearn* (*e*) trustees of a harbour were held liable for not taking reasonable care to ascertain that the berth was in a proper condition.

Duty of wharfinger as to ships using wharf.

In *The Queen* v. *Williams* (*f*) the executive government of a colony was held liable for injury caused to a ship which lay at a wharf of which they were possessed, and for the use of which they were paid by the shipowner. The injury was done by a snag under water, of the existence of which the harbour authority, the government, were aware, but of which they gave no warning to the ship. The decision in this case

(*z*) 7 P. D. 151.

(*a*) *Dormont* v. *Furness Rail. Co.*, 11 Q. B. D. 496.

(*b*) As a corporation entitled to receive payment from ships entering the harbour; upon the authority of *Mersey Docks and Harbour Board* v. *Gibbs*, L. R. 1 H. L. 93.

(*c*) *The Crystal*, (1894) App. Cas. 508 (10 & 11 Vict. c. 27, and 40 & 41 Vict. c. 16); *Howard Smith* v. *Wilson*, (1896) App. Cas. 579 (a colonial Act); *Barraclough* v. *Brown*, (1897) App. Cas. 615.

(*d*) 13 P. D. 157; 14 P. D. 64.

(*e*) (1906) P. 48. Cf. *The Calliope*, (1891) App. Cas. 11. Cf. *Wright* v. *Lethbridge*, 6 Asp. M. C. 558. Cf. *The Burlington*, 8 Asp. M. C. 38.

(*f*) 9 App. Cas. 418; *The John A. Berkman*, 6 Fed. Rep. 535. See also *Parnaby* v. *Lancaster Canal Co.*, 11 A. & E. 223, as to the common law liability of a canal company for damage by sunken craft.

followed those in *Parnaby* v. *Lancaster Canal Co.* (*g*), and *Mersey Docks and Harbour Board* v. *Gibbs* (*h*).

Liability of harbour authority for damage by harbour master.

A steamship lying in Falmouth harbour had occasion to be placed on shore to have her propeller examined. The harbour master, at the request of her owner or master, went on board and gave orders as to getting her under way with a view to beaching her. By his order the anchor was let go in an improper manner, so that the vessel grounded on it and was injured. The owners sued the harbour master and the harbour authorities as his employers. Bye-laws in the usual form, made under the powers of the local Act and the general Act (10 Vict. c. 27), empowered the harbour master to regulate the movements of vessels in the harbour, and required vessels to obey his directions. It was held that the harbour master was acting in his capacity of harbour master when he gave the order to let go the anchor; that the order was a grossly wrong and negligent order; and that both he and his employers, the harbour authorities, were liable for the negligence (*i*).

In *The Apollo* (*k*), the foreman docksman, in the absence of the harbour master, gave permission, at the request of the ship's agent, to put the ship on the bottom of a lock leading into the harbour, for the purpose of freeing her propeller, which had fouled a rope. The ship was damaged through sitting upon an old dock-sill, the existence of which was unknown to the foreman docksman, and the shipowners sued the dock company for damages. It was held by the House of Lords, with some difference of opinion, and after conflicting decisions in the Courts below, that the foreman docksman was discharging the duties of the harbour master, and that it was within his duty to authorize the use of the lock for grounding the ship, and that he ought to have told the master of the ship that it was not fit for the purpose. Consequently the dock company were held liable.

In *Reney* v. *Magistrates of Kirkcudbright* (*l*), the harbour master ordered a ship to enter the harbour on an ebb tide.

(*g*) 11 Ad. & El. 223.
(*h*) L. R. 1 H. of L. 93, followed in *Bede Steamship Co.* v. *River Wear Commissioners*, (1907) 1 K. B. 310.
(*i*) *The Rhosina*, *Edwards*, *Robertson & Co.* v. *Falmouth Harbour Commissioners*, 10 P. D. 131.
(*k*) (1891) App. Cas. 499.
(*l*) (1892) App. Cas. 264.

In doing this she grounded, and was damaged. Two fishermen, who had been taken on board to assist in bringing the ship into harbour, were aware of the risk of grounding, but made no protest. It was held by the House of Lords that, notwithstanding the presence on board of the fishermen and their knowledge of the risk, the harbour master's order was alone the cause of the damage, and that the harbour authority was liable.

Liability of harbour authority for insufficient moorings.

There is no reported decision as to the liability of a port or harbour authority for a collision caused by the insufficiency or parting of moorings laid down by them for the use of ships. The owner of the ship which goes adrift would not, it seems, be liable in such a case (*m*), and upon proof of negligence it would probably be held that damages could be recovered against the port authority.

Action against port authority: time limit.

An action *in personam* against a harbour, port, or dock authority must be commenced within six months of the act complained of (*n*).

Pilotage authorities not liable for negligence of licensed pilot.

It has been attempted, but without success, to make a pilotage authority liable for the negligence of a pilot licensed but not employed by them (*o*). And in a very recent case, where the deputy harbour master of the defendants was also a pilot licensed by them, and was employed by the plaintiffs to pilot their ship, which was lost by his negligence, the defendants were held free from liability on the ground that, though it was their duty to license pilots, they were not authorized by their statutes to enter into pilotage contracts, or to employ a person as pilot for a particular vessel (*p*). But in another case in Scotland, where the loss was caused by the fault of a boatman, not licensed as a pilot, employed by the harbour trustees to conduct a ship, the trustees were

(*m*) *The Toward* and *The Turkistan*, 13 Ct. of Sess. Cas. 4th ser. 342, where a ship fast to one of the Clyde Trustees' buoys was held not in fault for its carrying away. See also *The William Lindsay*, L. R. 5 P. C. 338; *The Ambassador*, cited 2 P. D. 37; *The Monkseaton*, 14 P. D. 51; *The Ratata*, (1898) App. Cas. 513.

(*n*) 56 & 57 Vict. c. 61; *The Ydun*, (1899) P. 236. *Aliter in rem*, see p. 295.

(*o*) *Dudman* v. *Brown and Dublin Port and Docks Board*, Ir. Rep. 7 C. L. 518.

(*p*) *Shaw, Savill & Albion Co.* v. *Timaru Harbour Board*, 15 App. Cas. 429. The question was raised, but not decided, in *Parker* v. *North British Rail. Co.*, 25 Ct. of Sess. Cas. 4th ser. 1059.

held liable (*q*). In some cases the Act of Parliament constituting the pilotage authority expressly provides that it shall not be liable for damage caused by negligence of pilots licensed by them (*r*).

Liability in case of a collision with one of H.M. ships.

In the case of damage done by a King's ship, the legal responsibility attaches to the actual wrong-doer alone (*s*). If the ship is properly in charge of an inferior officer, the captain is not liable in a civil action (*t*); nor is a pilot liable for a wrong order given by the officer in command (*u*). The appointment of all officers being with the Government, the superior officer is not answerable for the acts of his subordinates.

His Majesty's ships and public ships of foreign states are not subject to arrest (*x*). But they usually submit themselves to the jurisdiction of the Admiralty Court, and upon so doing they subject themselves to the ordinary rules of law (*y*).

Whether vessels belonging to a civil department of the Government, and employed for the special purposes of the department, are entitled to the immunity from arrest enjoyed by ships of war seems doubtful (*z*).

Liability of owners of cargo.

Owners of cargo on board a ship in fault for a collision are not liable for the damage done by the ship; but the cargo may be arrested in order to secure for the benefit of the sufferers in the collision the payment of freight due to the shipowner (*a*).

The shipowner is not discharged from his liability by the

(*q*) *Holman* v. *Irvine Harbour Trustees*, 4 Ct. of Sess. Cas. 4th ser. 406 (Rettie).

(*r*) *E.g.*, 25 Vict. c. 29 (local), s. 43 (Brean Down); 25 Vict. c. 31 (local), s. 65 (Berwick-upon-Tweed).

(*s*) *The Mentor*, 1 C. Rob. 179; *The Athol*, 1 W. Rob. 374; *The Volcano*, 2 W. Rob. 337; *The Birkenhead*, 3 W. Rob. 75; *The Bellerophon*, 3 Asp. M. C. 58; and *The Sans Pareil*, (1900) P. 267, are instances of actions against King's ships.

(*t*) *Nicholson* v. *Mounsey*, 15 East, 384. See *The Cybele*, 3 P. D. 8; *Wright* v. *Lethbridge*, 6 Asp. M. C. 558 (an action against a Queen's harbour master).

(*u*) *Stort* v. *Clements*, 1 Peake, 107.

(*x*) *The Athol*, 1 W. Rob. 374; *The Comus*, 2 Dods. 464. As to ships of a foreign sovereign which are engaged in trade, see below, p. 209. In America, Government ships are snbject to Admiralty process: *The Siren*, 7 Wall. 152; *The Fidelity*, 16 Blatch. 569.

(*y*) See *The Printz Frederick*, 2 Dods. 451.

(*z*) See *The Cybele*, 3 P. D. 8; *The Lord Hobart*, 2 Dods. 100.

(*a*) *Supra*, p. 75.

sinking of his ship (*b*), though in such a case no action *in rem* can be brought. Shipowner liable, though ship lost.

Part owners of a ship in fault for a collision are at law severally liable as joint wrong-doers, or joint employers of the actual wrong-doer. One of them may be sued alone (*c*); but if judgment is recovered against one part owner, it seems that no action can be brought against the others, though the judgment is unsatisfied (*d*). Liability of part owners and joint wrong-doers.

The rule that there is no contribution between wrong-doers does not prevent a part owner who has been compelled to pay the whole of the damages from recovering in an action for contribution against his co-owners (*e*). And money so paid for damages, where the owner's liability is limited, may be brought into account as money disbursed for the use of the ship (*f*). Nor does the doctrine of no contribution between wrong-doers prevent one of two ships in fault for a collision recovering from the other half the damages which she has been compelled to pay to a third ship, against which she was driven by the first collision (*g*). Contribution amongst co-owners.

If a collision occurs between two ships belonging to the same owner, his only remedy is against the actual wrong-doer. And the case seems to be the same where the two ships have one or more part owners in common. But the owners of cargo, or passengers, on board either ship can recover in an action of tort against the shipowners, subject to this, that where both ships are to blame, and the shipowners are protected by the terms of their contract against the negligence of their servants, the right to recover is limited to half Collision between two ships owned by the same persons.

(*b*) *The Normandy*, L. R. 3 A. & E. 152; *The Calcutta*, 17 W. R. 744.

(*c*) *Mitchell* v. *Tarbutt*, 5 T. R. 649. As to the liability of part owners by the civil law, see *supra*, p. 63, note (*l*). By the maritime law a part owner was liable only to the extent of his interest in the ship: Emerigon, Contr. à la grosse, Ch. IV. s. 11; Grotius de jur. belli et pacis, lib. 2, ch. 11, s. 13. *Semble*, this was once the law of the English Admiralty; see *Alleson* v. *Marsh*, 2 Ventr. 181; *Gull* v. *Caswell*, *infra*, p. 140, note (*t*); and (*semble*) is now the law in France.

(*d*) *Brinsmead* v. *Harrison*, L. R. 7 C. P. 547. As to the several liability where two ships are sued in Admiralty, see *The Atlas*, 3 Otto, 302; *The Juniata*, *ibid.* 337; *The Alabama* and *The Gamecock*, 2 Otto, 695. A part owner who has given a bond for the release of his ship has a right to contribution if called on to pay any money in respect of the bond.

(*e*) 1 Smith's Lead. Cas. 11th ed. p. 155.

(*f*) 57 & 58 Vict. c. 60, s. 505.

(*g*) *The Frankland*, (1901) P. 161. And so in America, *The Mariska*, 107 Fed. Rep. 989; *The Hudson*, 15 Fed. Rep. 162.

the loss sustained, and that where (as is not ordinarily the case) the protection extends to the negligence of the shipowner's servants, as well on board the carrying ship as on board other ships of the same owners, there is no right to recover at all (*h*).

The remedy of the officers and crew for loss in a collision between their own ship and another of the same owners is not affected by the fact that the officers and crew of both ships are in the employment of the same employers. The crews of the two ships are not in a common employment in the sense that injury by the negligence of the crew of one of the vessels was an ordinary risk of the crew of the other (*i*).

Liability in special cases.

The liability of the shipowner as carrier upon the contract of carriage for a collision whereby goods or passengers are injured (*k*); in respect of collisions abroad (*l*); in respect of collisions with or between foreign ships, or in foreign waters (*m*); of collisions where one or both ships are in tow (*n*); where three or more ships are involved in the collision (*o*); where negligence on board one ship causes a collision between two others, or injures another ship (*p*); and in respect of damage done to a pier or harbour works (*q*), are considered elsewhere.

(*h*) See *Chartered Mercantile Bank of India, China and London* v. *Netherlands India Steam Navigation Co.*, 10 Q. B. D. 521. The law as here laid down, limiting the damages recoverable, does not depend upon the doctrine of *Thorogood* v. *Bryan*, 8 C. B. 115, but upon what Dr. Lushington believed to be the ancient practice of the Admiralty Court. See *The Milan*, Lush. 388, and *per* Lindley, L. J., 10 Q. B. D. 545. It would therefore seem to be unaffected by the decision in *The Bernina* (No. 2), 12 P. D. 58; 13 App. Cas. 1. See *per* the M. R., 12 P. D. at p. 83, and *infra*, p. 268. See also *The Bernina* (No. 1), 12 P. D. 36 (where the shipowners were not protected against the negligence of their servants, and were liable to cargo owners in contract), and *infra*, p. 268.

(*i*) *The Petrel*, (1893) P. 320.

(*k*) p. 266 *seq.*

(*l*) p. 198 *seq.*

(*m*) p. 199 *seq.*

(*n*) p. 167 *seq.*

(*o*) p. 27.

(*p*) p. 28.

(*q*) pp. 68, 78.

CHAPTER IV.

PERSONS ENTITLED TO RECOVER.

All persons injured in their persons or property in a collision caused by the fault of one or both ships, and who have not themselves or through their agents been guilty of negligence causing the loss (*a*), are entitled to recover damages. Such persons are usually of one or other of the following classes: owners of the injured ship, whether they are registered as owners or not (*b*); passengers, master, or crew losing their clothes or effects (*c*); owners or consignees of cargo on board either ship; persons entitled under Lord Campbell's Act to recover damages for relatives killed (*d*), or persons on board either ship who are hurt in the collision (*e*); the indorsee of a bill of lading, even though the cargo has been sold (*f*); bailees, and other persons having a special property in, or temporary possession of, the ship or cargo (*g*).

Actions by part owners: consolidation of actions.

It seems that part owners of the injured ship might recover damages for their respective losses in successive actions (*h*); and the defendant would not, it seems, be entitled to have the other co-owners added as plaintiffs, at any rate without their

(*a*) As to the division of loss in cases where both ships are in fault, see below, p. 117.

(*b*) *The Ilos*, Sw. 100.

(*c*) *The Cumberland*, 5 L. T. 496. As to a passenger by ferry in charge of his own mare, see *Willoughby* v. *Horridge*, 12 C. B. N. S. 742.

(*d*) 9 & 10 Vict. c. 93; *infra*, p. 114. A posthumous child may recover for the loss of its father; *The George and Richard*, L. R. 3 A. & E. 466.

(*e*) As to members of the crew so hurt, see *The Borodino*, 5 L. T. 291; *Taylor* v. *Dewar*, 2 B. & S. 58.

(*f*) *The Marathon*, 40 L. T. 163.

(*g*) *The Minna*, L. R. 2 A. & E. 97. A bailee may recover damages, though not himself liable to his bailor for loss or damage: *The Winkfield*, (1902) P. 117; overruling *Claridge* v. *Staffordshire Tramways Co.*, (1892) 1 Q. B. 422. In *The Charlotte*, (1908) P. 206, underwriters suing in the name of the sellers of a cargo, who had been paid by the buyers, were held entitled to recover the value of the goods from the wrong-doer. In an American case damages were recovered, although all interest in the injured ship had been transferred to a foreigner, whereby the ship was forfeited to the State: *The Nahob*, Brown, Ad. 115.

(*h*) *Addison* v. *Overend*, 6 T. R. 766; *Sedgworth* v. *Overend*, 7 T. R. 280.

consent in writing, nor to have the proceedings stayed until this was done, so that he should not be vexed by more than one action (*i*). If a part owner dies after the collision and before action brought, the right of action survives to the other part owners (*k*).

Underwriters must sue in name of assured.

The underwriters upon a ship, A., sunk by collision with B., cannot sue B. or her owners in their own names. Their only right of action is by subrogation to the rights of the owners of A.; and they must sue in the names of the owners of A. (*l*).

Person or owner of goods on board ship in fault can recover.

There was formerly doubt whether a person injured on board a ship which is herself in fault can recover at common law. This doubt, originating in the well-known case of *Thorogood* v. *Bryan* (*m*), was set at rest by the House of Lords in *The Bernina* (No. 2) (*n*). *Thorogood* v. *Bryan* was there overruled. It had never been recognized as law in the Court of Admiralty, Dr. Lushington having held that, *Thorogood* v. *Bryan* notwithstanding, the owners of cargo on board a ship in fault could recover half their loss against the other ship being also in fault (*o*).

Thorogood v. *Bryan*.

Thorogood v. *Bryan* was decided in 1849 by a very strong Court (Coltman, Vaughan Williams, Maule, Cresswell, JJ.). It held that the representatives of a passenger in an omnibus, who was killed by the combined negligence of the driver of the carrying omnibus and the driver of another omnibus, could not recover against the employer of the latter driver. The negligence in the carrying omnibus consisted in setting the passenger down in the middle of the street, and not drawing up to the kerb: the negligence in the other omnibus was carelessly driving over the passenger after he had been set down. The ground of the decision was that the passenger was "identified" with the driver of his own

(*i*) Ord. XVI. r. 2, 11; *Jackson* v. *Kruger*, 54 L. J. Q. B. 446; *Tryon* v. *The National Provident Institution*, 16 Q. B. D. 678.

(*k*) See *Rex* v. *Collector of Customs*, 2 M. & S. 223; *Martin* v. *Crompe*, 1 Ld. Raym. 340.

(*l*) *Simpson* v. *Thompson*, 3 App Cas. 279.

(*m*) 8 C. B. 115; *Cattlin* v. *Hills*, *ibid.* See also *Armstrong* v. *Lancashire and Yorkshire Rail. Co.*, L. R. 10 Ex. 47; *Adams* v. *Glasgow and S. W. Rail. Co.*, 3 Ct. of Sess. Cas. 4th ser. 215.

(*n*) Nom. *Mills* v. *Armstrong*, 13 App. Cas. 1; followed in *Mathews* v. *London Street Tramways Co.*, 58 L. J. Q. B. 12.

(*o*) *The Milan*, Lush. 388; *The City of Manchester*, 5 P. D. 3; *ibid.* 221.

omnibus in the matter of negligence, and therefore, having by his own (*i.e.* his driver's) negligence partly caused the accident, he could recover nothing. This case, though often questioned, did not come before a higher Court for review until 1888, when the House of Lords, affirming the decision of the Court of Appeal, overruled *Thorogood* v. *Bryan*. The facts in *The Bernina* were that Toeg, a passenger, and Armstrong, an engineer on board *The Bushire*, were killed in a collision between *The Bernina* and *The Bushire*, caused by faults in both vessels, but without fault in Armstrong or Toeg. It was held that the representatives of Toeg and Armstrong could recover full damages against the owners of *The Bernina* (*p*). *The Bernina.*

A servant cannot recover against his employer for injury sustained in the course of his employment through the negligence of a fellow-servant (*q*). Therefore a seaman or a ship's officer cannot recover against the shipowners for loss or injury caused by the fault of one of themselves or of the master (*r*). But he may recover for loss or injury suffered in a collision with another ship of the same owners; and not the less so because the collision was caused by the fault of the crew of the other ship in the employment of his own employers (*s*). But a compulsory pilot is not a servant of the shipowner, and the rule above stated does not prevent him from recovering against the owner (*t*). A shipowner who has paid a claim under the Workmen's Compensation Act, 1906, may, in an action *in personam*, recover such amount as damages from the owner of the wrong-doing ship (*u*). Shipowner's liability to crew.

(*p*) Lord Bramwell considered that *Thorogood* v. *Bryan* was rightly decided upon a point of pleading, and that the decision of the House of Lords involved the overruling of *Waite* v. *North Eastern Rail. Co.*, E. B. & E. 719.

(*q*) *Priestly* v. *Fowler*, 3 M. & W. 1; Chitty on Contr. 10th ed. 537. See *Wilson* v. *Merry*, L. R. 1 Sc. App. 326. The Employers' Liability Act, 1880, does not apply to seamen or apprentices to sea service, or, it seems, to an officer. See 43 & 44 Vict. c. 42, s. 8; 38 & 39 Vict. c. 90, ss. 10, 13.

(*r*) *Leddy* v. *Gibson*, 11 Sess. Cas. 3rd ser. 304; *Hedley* v. *Pinckney & Sons SS. Co.*, (1894) App. Cas. 222, where *Ramsey* v. *Quinn*, Ir. Rep. 8 C. L. 322, suggesting a distinction in the case of the master, was not followed. In America the master and crew recovered half their losses against the other ship, where both were in fault; but the amount recovered by the master went to recompense cargo owners: *The City of New York*, 25 Fed. Rep. 149; cf. *The Titan*, 23 Fed. Rep. 413, where the fault was the pilot's.

(*s*) *The Petrel*, (1893) P. 320, *supra*, p. 96.

(*t*) *Smith* v. *Steele*, L. R. 10 Q. B. 125.

(*u*) *The Annie*, (1909) P. 176.

CHAPTER V.

DAMAGES.

What damages may be recovered; general rule.

The wrong-doer in a collision is liable for all the reasonable consequences of his negligence—"such damages as flow directly and in the usual course of things from the wrongful act" (*a*). This is the general principle, and where the damages claimed are in respect of loss or injury to ship or goods, occurring at, or immediately after, the collision, there is little difficulty in applying the rule. But where the loss, though consequent upon and connected with the defendant's negligent act, was not immediately caused by it, there is often great difficulty in determining whether damages in respect of such loss can be recovered as having been caused by the negligence. The question is closely connected with that discussed in a former chapter as to the legal consequences of negligence.

Assuming that there is a good cause of action, there is a difficulty in many cases of determining the measure of damages, and the proper items to be taken into account in estimating them. As similar facts giving rise to similar claims for damages are constantly recurring in collision actions, it will be convenient to collect the decisions upon this subject.

Restitutio in integrum.

The general rule was thus stated by Dr. Lushington in *The Clarence* (*b*):—"The party who has sustained a damage by collision is entitled to be put, as far as practicable, in the same condition as if the injury had not been suffered." This appears to be the meaning of the phrase used in some of the

(*a*) *Per* Bowen, L. J., *The Argentino*, 13 P. D. 191, 201; affd. 14 App. Cas. 519; *The Notting Hill*, 9 P. D. 105; *Victorian Railway Commissioners* v. *Coultas*, 13 App. Cas. 222. The "usual course of things" includes the probable and reasonable conduct of those on board a ship in collision: *The City of Lincoln*, 15 P. D. 15, 18.

(*b*) 3 W. Rob. 283, 285.

cases that the sufferer is entitled to *restitutio in integrum* (*c*). There is no difference between the Admiralty and common law rules as to what damages are recoverable (*d*). He is entitled to be paid the cost of the repairs, though he has become bankrupt since they were executed, and has not paid the shipwright who executed them (*e*).

Cost of repairs.

The owner of a ship wrongfully injured in a collision is entitled to have her fully and completely repaired; and if the necessary consequence of this is, that the value of the ship is increased, so that the owner receives more than an indemnity for his loss, he is entitled to that benefit. No deduction is made from the damages recoverable on account of the increased value of the ship, or the substitution of new for old materials (*f*). In this respect the owner of a ship injured by collision is in a different position from an owner claiming an indemnity under the ordinary marine policy of insurance (*g*). But where slight damage might have been effectually made good by bolts and braces, it was held in America that the expense of an entirely new beam should not be allowed (*h*). And the cost of repairs must not be inflamed by delay or intermediate voyages (*i*).

Where, in order to effect repairs consequent on collision, it was necessary to dry dock the ship, it was held that the owner was entitled to take advantage of the opportunity to fit bilge keels without contributing to the cost of the dry dock (*k*).

Value of the ship, if she is lost.

If the ship is totally lost, the owner is entitled to recover her market value at the time of the collision (*l*); and her

(*c*) See this subject discussed at length, Roscoe's Measure of Damages in Actions of Maritime Collisions, p. 5. See also *The Inflexible*, Swab. 200; *The Clyde*, Swab. 23; *The Ironmaster*, Swab. 441; *The Columbus*, 3 W. Rob. 158; *The Gazelle*, 2 W. Rob. 279, 280; cited by Sir R. Phillimore in *The Halley*, L. R. 2 A. & E. 3, 7.

(*d*) *The Argentino*, 13 P. D. 191, 195, 200.

(*e*) *The Endeavour*, 6 Asp. M. C. 511.

(*f*) *The Pactolus*, Swab. 173; *The Gazelle*, 2 W. Rob. 279; *The Bernina* (No. 3), 6 Asp. M. C. 65; and see *The Star of India*, 1 P. D. 466, 471.

(*g*) As to the rule of "one-third new for old" in insurance cases, see *Lohre* v. *Aitchison*, 4 App. Cas. 755.

(*h*) *The J. T. Easton*, 24 Fed. Rep. 95.

(*i*) *The Henry M. Clark*, 22 Fed. Rep. 752.

(*k*) *The Acanthus*, (1902) P. 17, following *The Ruabon SS. Co* v. *London Assurance Co.*, (1900) App. Cas. 6. Cf. *The Reiher*, 2 Pr. Ad. Dig. 1747; *The Alfred*, 3 W. Rob. 232, 239.

(*l*) *The Clyde*, Swab. 23; *The Ironmaster*, Swab. 441; *The Columbus*, 3 W. Rob. 158; *The Clarence*, 3 W. Rob. 283; *The Laura Lee*, 24 Fed. Rep. 483.

value at her home port, and not in the foreign port to which she is taken after collision, is to be taken (*m*). Where the ship is of a special construction or character, and, although of special value to her owner, has little or no market value, damages must be estimated by considering what is her value to the owner as a going concern at the time she was lost (*n*). Her original cost, her condition at the date of her loss, money spent in upkeep, and her past earnings, have all to be considered (*o*). Interest on the amount of the damages is allowed from the day of the collision, if the ship was not earning freight. If she was earning freight, the owner is entitled to the estimated value of the ship at the end of her voyage, together with the freight she would have earned, less the cost of completing the voyage, and to interest on the whole from the probable end of the voyage. If payment is made before that time, an allowance is made for discount. If, however, the plaintiff's loss exceeds the amount of the defendant's statutory liability, interest runs from the date of the collision, whether freight was being earned or not (*p*). If at the time of her loss the ship was upon a voyage to a port from which she was under charter to carry a cargo, and is totally lost, she is entitled, in addition to her value, to the profits she would have made under the charter (*q*).

Interest, or freight, if freight was being earned.

The principle upon which interest is allowed in Admiralty was discussed in *The Kong Magnus* (*r*). In that case interest on the damages was allowed from the probable termination of the voyage on which the ship was engaged at the time of the collision (19th April, 1878) to the date of payment, the action not having been brought until nearly eleven years (8th January, 1889) after the collision. In the same case it

(*m*) *The Blenheim*, 17 Fed. Rep. 608.

(*n*) *The Harmonides*, (1903) P. 1.

(*o*) Cf. *La Normandie*, 58 Fed. Rep. 427.

(*p*) For a full statement by Sir R. Phillimore of the principle upon which compensation to the injured party is made in cases of collision, see *The Northumbria*, L. R. 3 A. & E. 6, 12; see also *The Canada*, Lush. 586; *The Clyde*, Swab. 23; *The Ironmaster*, *ibid.* 441; *The Columbus*, 3 W. Rob. 158; *The Clarence*, *ibid.* 283.

(*q*) *The Kate*, (1899) P. 165; *The Racine*, (1906) P. 273; *The Clyde* and *The Columbus*, *ubi supra*, are not opposed to this: *ibid.* The following American cases do not accord with *The Kate*: *The Hamilton*, 95 Fed. Rep. 844; *The Fontana*, 119 Fed. Rep. 853; *The Umbria*, 166 U. S. Rep. 404.

(*r*) (1891) P. 223.

was held that there is no limitation to six years' interest by analogy to the Statutes of Limitation.

The Admiralty practice as to allowing interest on damages applies to common law actions which, before the Judicature Acts, the Admiralty Court had not, but which the Admiralty Division has, jurisdiction to entertain; also to actions transferred by consent to the Admiralty Division (*s*).

Loss of injured ship after collision presumed to have been caused by collision.

Where the ship is damaged but not sunk in the collision, and she afterwards receives further injury or is totally lost, the presumption ordinarily is that the subsequent injury or loss was caused by the defendant's negligence, and the burden is in theory upon the wrong-doer in the collision to prove that it was not so caused, but in practice the plaintiff frequently at any rate sets out to prove his case (*t*).

Where a ship was partially disabled in a collision for which she was not in fault, and subsequently drove ashore in consequence of the parting of her cable, it was held that the ship in fault for the collision was liable for the loss by the stranding (*u*). In this case Dr. Lushington said: "It is admitted that *The Pensher* is to blame for the collision, and the consequence of this is, that all the damage arising from the collision must be borne by *The Pensher*, unless it can be shown by clear and positive evidence that any part of that subsequent damage arose from gross negligence or great want of skill on the part of those on board the vessel damaged."

In *The Mellona* (*x*), the ship having been disabled in the collision went ashore, and was totally lost. It was contended that she need not have gone ashore if she had been hove to, and proper skill had been shown by those on board; but Dr. Lushington held that *primâ facie* the loss was attributable to the collision. Where one vessel is found in fault for a collision, and the other is subsequently lost, the presumption of law is that the latter was lost in consequence of the collision. "In all questions of this description that is the *primâ facie* presumption; and great, indeed, would be the inconvenience, and still greater the difficulty, if, in all cases of this

(*s*) *The Gertrude; The Baron Aberdare*, 13 P. D. 105.

(*t*) As in *The Bruxellesville* (1907, Fos. 323, 329), (1908) P. 312. This point does not appear in the report: see also *The Beta*, 44 Fed. Rep. 389.

(*u*) *The Pensher*, Swab. 211, 213; *The Govino*, 5 Quebec L. R. 57.

(*x*) *The Mellona*, 3 W. Rob. 7, 13.

kind when the vessel did not go down immediately, but was subsequently lost, the Court had to enter into an investigation whether all the measures adopted on board the damaged vessel were right, or whether, if other measures had been pursued, the vessel might not have been saved" (*y*).

In another case a ship was run into whilst brought up and riding with two anchors down. One cable having parted in the collision, the other failed to hold her, and she drove ashore. It was held that the loss from her going ashore was recoverable as damages in the collision action (*z*).

So where, bad weather having come on, the injured ship went ashore twenty-one hours after the collision, the representatives of some of the crew who were drowned, but who might have been saved if they had gone on board other vessels which offered assistance after the collision, were held entitled to recover against the wrong-doing ship (*a*).

A steamship in the North Sea ran into and cut off the quarter of *The Albatross*, a barque. The barque's binnacle compass, log line, log glass, and working charts were lost in the collision, and her hull was damaged, so that she was partly unmanageable. Those on board tried to take her into the Thames with a spare compass. Without negligence on their part, and in consequence of the loss of their chart and the damaged condition of the hull, she went ashore and was lost. It was held that the steamship owners were liable for her loss (*b*).

Where, in consequence of the collision, a steamship's condenser cover blew off, and water came into the ejection pipe, which was plugged, but the plug gave out as the ship was being towed into dock, and the ship sank, it was held that the loss was caused by the collision (*c*).

Those on board the injured ship must exhibit

But the fact of a ship being injured by the negligence of another does not justify those on board in neglecting to take

(*y*) See also *The Linda*, Swab. 306.

(*z*) *The Despatch*, 14 Moo. P. C. 83; *The Maid of Kent*, 6 P. D. 178.

(*a*) *The George and Richard*, L. R. 3 A. & E. 466. See also as to this subject, *per* Martin, B., in *Wilson* v. *Newport Dock Co.*, L. R. 1 Ex. 177, 187.

(*b*) *The City of Lincoln*, 15 P. D. 15.

(*c*) *Reischer* v. *Borwick*, (1894) 2 Q. B. 548, an action upon a policy for loss by collision.

all reasonable measures to save the ship (*d*), and lessen the effects of the collision. They must exhibit ordinary courage in standing by their vessel, and show proper skill and seamanship according to the circumstances of the case. The Court, however, will make reasonable allowance for the excitement which usually attends a collision, and those on board will not be expected to be so acute in their judgment, or to act with the same skill and coolness, as if there had been no collision (*e*).

ordinary skill and courage in standing by her.

Where the injured ship went ashore, and those in charge wilfully refused assistance to get her off, it was held that her owners could not recover for loss arising from the obstinacy of those on board (*f*).

They must take assistance, if necessary.

If the injured vessel is abandoned unjustifiably, the other vessel, though in fault for the collision, is not liable for a total loss, but only for the actual damage done in the collision (*g*).

Unjustifiable abandonment.

The question whether the abandonment of a ship injured by collision was justifiable is for the Court to decide upon the particular circumstances of each case. In considering it the Court will not be exacting in requiring those on board to stand by her. In *The Blenheim* (*h*), Dr. Lushington said: "When a collision takes place on a dark night, particularly at a tempestuous period of the year, and when the vessel producing the collision is of greater burden than the one struck, I cannot possibly settle, with satisfaction to my own mind, or security to justice, what ought to be the reasonable extent of fear and apprehension to the crew of the vessel so struck. It is impossible for any Court of justice to say, with any degree of certainty, what are the precise circumstances that would justify the abandonment of a vessel. If there be any reasonable prospect that the lives of the crew are endangered, I have determined, and I will do so until I am overruled, that they are justified in quitting the

(*d*) Including jettison, and acts which may give rise to general average contribution from the shipowner. See *The Marpessa*, (1891) P. 403; *The Toward*, *infra*, p. 113.

(*e*) *The Hannah Park* and *The Lena*, 14 L. T. 675; *The Thuringia*, 1 Asp. M. C. 283.

(*f*) *The Flying Fish*, Br. & Lush. 436.

(*g*) *The Thuringia*, *ubi supra*.

(*h*) 1 Sp. 285, 289.

vessel, and the consequences must fall on the wrong-doer" (*i*).

If a ship is improperly abandoned after a collision, her owner will not be entitled to recover as damage caused by the collision, either the value of the ship or salvage expenses payable upon her being brought into port (*k*).

The Thuringia, a steamship which had been run down by the fault of another vessel, was improperly abandoned, and subsequently sank. It was held that she could recover no more than the expense which would have been incurred in making good the damage caused by the collision (*l*). The collision occurred sixteen or eighteen miles from Heligoland in fine weather; the ship remained afloat three hours after the collision, and might have been taken to Heligoland.

Neglect to repair injury received in the collision.

In another case (*m*) no attempt was made to repair the damage received in the collision, such damage consisting in a small hole which might easily have been stopped. In consequence of the hole being left unstopped the cargo was injured by water. It was held that the cargo owner could not recover damages against the other ship, although she was in fault for the collision. The duty of the master of the injured ship to take proper steps to preserve, and, under some circumstances, to sell, an injured cargo, has been considered in several cases (*n*). It was held negligence in a master not to have discharged a cargo of beans which were wetted in a collision (*o*). Where a cargo was damaged partly by the collision and partly by the master's negligence in not carrying it on to the port of discharge without delay, it was held that damages for loss arising from the latter cause were not recoverable in the collision action (*p*). The Court will not, upon the application of the owner of a ship damaged in collision, order her sale (*q*).

Neglect to beach.

A steamship at anchor in the Elbe (800 feet wide) was run into by the negligence of another ship. It was held that her

(*i*) See also *The Linda*, Swab. 306; *The Lindsay*, Ir. Rep. Ad. 1 Eq. 259.

(*k*) *The Linda*, Swab. 306.

(*l*) *The Thuringia*, 1 Asp. M. C. 283.

(*m*) *The Eolides*, 3 Hag. 367; and see *supra*, p. 104.

(*n*) See *Cargo ex Argos*, L. R. 5 P. C. 134, 165, and cases there cited.

(*o*) *Notara* v. *Henderson*, L. R. 7 Q. B. 225; and see *The Elina*, 5 P. D. 237, note; *The Bernina*, 12 P. D. 36.

(*p*) *The Elina*, 5 P. D. 237, note.

(*q*) *The Wexford*, 13 P. D. 10.

owners were not entitled to recover as damages the cost of raising her. She sank some hours after the collision, and no water reached the engine room for half an hour after the collision. There was evidence that she might and ought to have been beached (*r*). But where beaching was not reasonably possible, it was held that there was no contributory negligence on the part of the crew of a barge in failing to beach her after the damage was done. The barge, moored in Tilbury Dock astern of a steamship, was struck by the propeller and sank (*s*). So a mistake of judgment in not beaching is not necessarily negligence (*t*).

Again, where insufficient measures were taken to repair a vessel, so that after being repaired, she sank at sea, it was held that the owners could not recover for a total loss (*u*).

Owner not required to raise ship sunk in collision.

Where a ship is sunk at sea by collision, there is no obligation upon the owner to raise her, even if it would be possible to do so (*x*). But if she is sunk in shoal water, or in a position in which there is no difficulty in raising her, her owner would not be justified in at once abandoning her (*y*). Where an anchor and chain were slipped to avoid collision, and the cost of recovering them would have been more than they were worth, their full value was recovered as damages (*z*). If he elects to raise her, and it turns out upon a survey, that she is not worth repairing, he is entitled to recover as damages the expense of raising and docking her, less her value in the dock. If he repairs her at a cost exceeding her value before collision, he cannot recover the cost of repairs beyond such value; nor anything in the nature of demurrage (*a*). Where there was such delay in raising her, that it was impossible to determine the amount of the damage done by the collision, the claim was dis-

(*r*) *The Hansa*, 6 Asp. M. C. 268. Cf. *The Scotia*, 6 Asp. M. C. 541; and *The Henri IV.*, 13 Quebec L. R. 379.

(*s*) *The Hornet*, (1892) P. 361.

(*t*) *The Frostburg*, 25 Fed. Rep. 451; *The Dauntless*, 116 Fed. Rep. 543, where the ship was in tow.

(*u*) *The Bruxellesville*, (1908) P. 312.

(*x*) *The Columbus*, 3 W. Rob. 158; *The Franconia*, 16 Fed. Rep. 149; *Pettie* v. *Boston Tow-Boat Co.*, 49 Fed. Rep. 464.

(*y*) Cf. *The Havilah*, 50 Fed. Rep. 331; *The Baltimore*, 8 Wall. 377; *The Thomas P. Wray*, 28 Fed. Rep. 526.

(*z*) *Johanssen* v. *The Elvina*, 4 Fed. Rep. 573.

(*a*) *The Empress Eugenie*, Lush. 138. Cf. *The Minnie*, 26 Fed. Rep. 860; *Summers* v. *The Oneida*, 84 Fed. Rep. 716.

missed (*b*). If, acting as a prudent owner, he elects not to repair, and sells her, he is entitled to recover her value at the time of collision, less the proceeds of sale, together with interest from the date of the collision (*c*).

Where a ship is sunk by collision, and the owner pays to the wreck-raising authority the cost of raising her, the sum so paid is damages recoverable from the wrong-doer (*d*).

Damages increased by plaintiff's negligence after collision.

Damages for loss occurring during, or after, and in consequence of, the collision, but caused partly by negligence of the plaintiff, cannot be recovered as having resulted entirely from the defendant's negligence which caused the collision. Where, by the omission to cut a lanyard which held together two ships which had been in collision, the damage was increased, it was held to have been caused partly by the plaintiff's negligence in not cutting the lanyard (*e*). So damage to one vessel by the fluke of the other's anchor was held to have been caused by the negligence of both ships, though the collision was caused entirely by the fault of the injured vessel, the circumstances being such that the collision would have been harmless but for the fact that the other vessel's anchor was in an improper position (*f*).

Damage increased by weak state of injured vessel.

If the damage received in a collision is greater than would ordinarily be the case because the injured ship was in a weak condition, the other is not the less liable for the entire loss, if she is in fault for the collision. The principle is, that if a part of the damage was clearly attributable to the wrong-doer, and it is impossible to draw the line with precision, and to say how much, the wrong-doer must make good the whole loss (*g*); but where the damage occasioned by the collision can be easily discriminated, defects disclosed in consequence

(*b*) *The Athe*, 12 Fed. Rep. 734.

(*c*) *The South Sea*, Swab. 141.

(*d*) *The Engineer*, *Tatham* v. *Burr*, (1898) P. 382, approving *The North Britain*, (1894) P. 77. As to the liability of the owner of the sunken ship for such expenses, see *The Crystal*, (1894) App. Cas. 508; *Howard Smith* v. *Wilson*, (1896) App. Cas. 579.

(*e*) *The Massachusetts*, 1 W. Rob. 371. See also *The Flying Fish*, Br. & Lush. 436; *Grill* v. *General Iron Screw Collier Co.*, L. R. 1 C. P. 600; *ibid.* 3 C. P. 476.

(*f*) *The Margaret*, 6 P. D. 76; cf. *The Young America*, 54 Fed. Rep. 410 (damage by jagged iron on a ship's side).

(*g*) *The Egyptian*, 10 L. T. 910; *The Young America*, *supra*; *The Syracuse*, 18 Fed. Rep. 828; *The Howard*, 30 Fed. Rep. 280, and cases there cited; *The Bernina* (No. 3), 6 Asp. M. C. 65; *The Sam Gaty*, 5 Bissel, 190.

of the collision, though existing prior to it, cannot be charged against the defendant (*h*). In America, however, it has been held that where a canal boat foundered after the collision, because she was so weak before the collision that she could not go into dry dock with her cargo on board to be repaired, the loss of cargo was not proximately caused by the defendant's negligence (*i*). In other American cases (*k*) half damages were given in such a case; and it is held to be negligence for the owner of an old and weak craft to expose her, without giving warning to other vessels, to the ordinary risks of contact with other craft at the wharves and slips of New York harbour (*l*).

Consequential damages.

What have been called consequential damages—that is to say, damages beyond the value of the ship or the cost of repairs—may in some cases be recovered (*m*).

Loss of expected salvage.

Where a smack was run down whilst engaged in performing a salvage service, she recovered the sum she would have received as salvage reward had she not been prevented from completing the service (*n*).

Loss of freight.

So freight which the injured ship is at the time of the collision engaged in earning, or under contract to earn, less the charges which would have been incurred in earning it, together with interest from the probable termination of the voyage, is always allowed as damages (*o*). "Loss by contact is, amongst other things, loss of the freight which the ship would have earned if she had not been crippled by the collision" (*p*). But reasonable efforts must be made to obtain other freight when the vessel is able to earn it (*q*). Where a ship was run down whilst on a voyage to Norway to bring home a cargo of lobsters, and another ship was taken up for

(*h*) *The Princess*, 5 Asp. M. C. 451.

(*i*) *The New York*, 40 Fed. Rep. 900; but see *The I. M. North*, 37 Fed. Rep. 270, *aliter*.

(*k*) *The Gilson*, 35 Fed. Rep. 333: *The City of Augusta*, 30 Fed. Rep. 844.

(*l*) *The Syracuse*, 18 Fed. Rep. 828; *The N. B. Starbuck*, 29 Fed. Rep. 797; *The Reba*, 22 Fed. Rep. 546.

(*m*) As to whether the question of consequential damages is for the Court or the registrar and merchants, see below, p. 302.

(*n*) *The Betsy Cairns*, 2 Hagg. Ad. 28.

(*o*) *The Northumbria*, L. R. 3 A. & E. 6; *The Kate*, (1899) P. 165; *The Racine*, (1906) P. 273.

(*p*) *Per* Erle, C. J., *Heard* v. *Holman*, 19 C. B. N. S. 1, 10. As to the cost of carrying goods to their destination, see *Rose* v. *Miles*, 4 M. & S. 101.

(*q*) *The C. P. Raymond*, 28 Fed. Rep. 765.

the purpose, it was held that the freight of the lobsters was recoverable as consequential damages (*r*).

So the increase in value of cargo on board and belonging to the owner of the injured ship, which would have arisen had the cargo been carried to the port of discharge, and which by the collision the owner is prevented from earning, may be recovered as damages in the collision action (*s*).

Salvage expenses.

If the injured ship sinks in consequence of the collision, the expenses of raising and docking her are recoverable as damages (*t*). And salvage or towage (*u*) expenses, whether incurred by the owner, or paid by him to salvors, are recoverable as damages, if they are properly incurred in consequence of injury received in the collision (*x*). In America the expenses of rescuing and sending ashore the crew of the wrong-doing ship, and of the consequent delay to the other ship, were allowed as damages (*y*). And the costs of both parties in a salvage action have been recovered (*z*); but in a later case some doubt was thrown upon this decision (*a*). The expense of bail in a salvage action is recoverable (*b*).

Cost of detaining officers and crew.

The cost of detaining the ship's officers whilst the ship was being repaired has been allowed as damages, where it was proved that the custom of the trade was not to discharge the officers at the end of the voyage. (*c*). In America the cost of detaining the crew after the collision, and of attempts to save the cargo, has been allowed (*d*).

Diminished market value.

Where it was proved that the market value of a yacht sunk in a collision was diminished, it was held in Ireland that, in addition to the sum required for repairs, the difference between

(*r*) *The Yorkshireman*, 2 Hagg. Ad. 30, note.

(*s*) *The Thyatira*, 8 P. D. 155.

(*t*) *The Empress Eugenie*, Lush. 138; *The Annie*, 12 P. D. 50.

(*u*) *The Inflexible*, Swab. 200; *The Fletcher* and *The Grapeshot*, 42 Fed. Rep. 504; *The Benjamin F. Hunt, Jr.*, 34 Fed. Rep. 816. See also *The Young America*, 26 Fed. Rep. 174; *The Cephus*, 24 Fed. Rep. 507; *The Fannie Tuthill*, 17 Fed. Rep. 87.

(*x*) *The Linda*, Swab. 306; *The Diana*, 2 Asp. M. C. 366; *The Williamina*, 3 P. D. 97, 99.

(*y*) *Leonard* v. *Whitwell*, 19 Fed. Rep. 547.

(*z*) *The Legatus*, Swab. 168, notwithstanding *Tindall* v. *Bell*, 11 M. & W. 228.

(*a*) *The British Commerce*, 9 P. D. 128, R. S. C.

(*b*) Ord. XII. r. 21a.

(*c*) *The Inflexible*, Swab. 200.

(*d*) *Hoffman* v. *Union Ferry of Brooklyn*, 68 New York Rep. 385.

her market value before and after the collision was recoverable as damages (*e*).

Where the owners suffer loss by the enforced idleness of their ship which has been injured in a collision, demurrage is allowed by way of damages whilst the necessary repairs are being effected, and whilst any other business which is rendered necessary owing to the collision is being transacted which necessarily delay the vessel, such as making a protest and obtaining the necessary official documents (*f*). Where two collisions have occurred each of which renders it necessary for the vessel to be repaired the loss of time will be attributed to that which is first in time (*g*). Demurrage.

A series of decisions in the House of Lords has made it clear that a public body not working for mercantile gain, which is temporarily deprived of its ship by a wrong-doer, is entitled to substantial damages, irrespective of the special use which it might have made of her during the time she was under repair. Earlier decisions of the Admiralty Court and of the Court of Appeal, to the effect that pecuniary loss only is recoverable as damages, are no longer law. In the *Greta Holme* (*h*) a dredger, belonging to the Mersey Docks and Harbour Board, and *The Mediana* (*i*), a light-ship belonging to the same owners, was run down and injured by the negligence of the defendant ship. The Board had no spare dredger, and in consequence of her detention

(*e*) *The Georgiana* and *The Anglican*, 21 W. Rob. 280.

(*f*) *The City of Buenos Ayres*, 1 Asp. M. C. 169; *The Clarence*, 3 W. Rob. 283; *The Inflexible*, Swab. 200; *The Star of India*, 1 P. D. 466. As to demurrage where the injured ship is one of a line advertised to sail at fixed dates, see *The Black Prince*, Lush. 568. In *The City of Peking*, 15 App. Cas. 438, a claim for demurrage, whilst a substituted vessel belonging to the same owners did the work of the injured vessel, was disallowed: see the observations on this case in *The Mediana*, (1900) A. C. 113, 119 *seq.*, distinguishing it from *The Greta Holme*, *infra*, and *The Mediana*. If the injured ship is a passenger ship running in an advertised service, it is held in America that the owner is entitled to receive as damages the probable cost of hiring another vessel to perform her service; and not the less so because he has another vessel kept as a stand-by to be used in case of accidents: *The Emma Kate Ross*, 50 Fed. Rep. 845. Cf. *The Cayuga*, 7 Blatchf. 385; *The Osceola*, 34 Fed. Rep. 921. Where the injured ship lost her charter and got a new and less profitable one, the difference between the values of the two charters was allowed as damages: *The Belgenland*, 36 Fed. Rep. 504. The rate of demurrage depends on the circumstances of each case, and on the profitableness of the employment of the ship near the time of collision.

(*g*) *The Haversham Grange*, (1905) P. 307; 10 Asp. 156.

(*h*) (1897) App. Cas. 596.

(*i*) (1900) App. Cas. 113.

whilst under repair mud accumulated in the harbour, which had afterwards to be removed. As regards the lightship, the Board had at considerable expense provided a spare lightship to take the place of this or other lightships which, owing to collision or other cause, had to be withdrawn from their stations. It was held in both cases that the Board were entitled to substantial and not merely nominal damages for the detention of their craft whilst under repair in consequence. These cases were followed by *The Marpessa* (*k*) when the previous decisions were approved, but clearly limited to non-mercantile claimants (*l*), the latter having still to prove an actual loss (*m*).

Where damages are estimated upon the footing of a total loss, although in fact the ship is subsequently saved and repaired, with the exceptions mentioned above, nothing will be allowed for, or in the nature of, demurrage (*n*).

In some of the cases (*o*) where damages were allowed in respect of the loss of a specific voyage, demurrage during the probable duration of the voyage appears to have been allowed; this was clearly wrong (*p*), thus in the *Star of India*, where, in consequence of the collision, a vessel lost the benefit of a charter, damages were allowed for the loss of the charter-party in addition to demurrage (*q*).

Loss of charter-party.

The principle upon which loss of a charter is allowed as damages is that the value of the charter is an accurate measure of the value of the ship to the owner during the time she is under repair, or is otherwise by reason of the collision prevented from earning money or being of use to her owner. Where at the time of the collision there is no existing charter, but there is a contract under which the ship is engaged to sail upon a profitable voyage, the probable earnings of the ship under the contract will be allowed as damages. *The Argentino*, at the date of

(*k*) (1907) A. C. 241; 10 Asp. 197, 232.

(*l*) American decisions are hardly in accordance with *The Mediana*. Cf. *The Conqueror*, 166 U. S. Rep. 110 (a yacht run down); *Fisk* v. *City of New York*, 119 Fed. Rep. 256; *The Providence*, 98 Fed. Rep. 133; *The George W. Roby*, 111 Fed. Rep. 601.

(*m*) *The Bodlewell*, (1907) P. 286; 10 Asp. 479.

(*n*) *The Columbus*, 3 W. Rob. 158.

(*o*) *The Star of India*, 1 P. D. 466; *The Consett*, 5 P. D. 229.

(*p*) *The Argentino*, 14 App. Cas. 519, 523.

(*q*) *The Star of India*, *ubi supra*; *The Consett*, *ubi supra*.

the collision, was under an engagement to take in a cargo at Antwerp for Batoum, taking the place of one of a line of ships advertised to sail between Antwerp and Batoum. It was held by the House of Lords, affirming the decision of Bowen and Lindley, L. JJ. (diss. Lord Esher, M. R.), that there should be allowed as damages by the collision "the ordinary and fair earnings of such a ship as *The Argentino*, having regard to the fact that she was put up as one of W. & L.'s line of steamers trading to the Black Sea, and advertised as such" (*r*). *The Kate* (*s*) was sunk upon her outward voyage to a port from which she was under charter to carry a cargo. Her owner recovered her probable value at the end of the voyage, plus the profits of the charter. This principle was subsequently extended to the case of a second charter (*t*).

Loss of fishing voyage.

A fishing smack recovered, besides the value of her nets and gear which she was obliged to cut adrift, the amount she might reasonably have expected to earn during the rest of the season (*u*), and on the principle of the above cases this appears to be the correct principle of assessment.

Anchor slipped.

The value of an anchor and chain properly slipped in the hope of avoiding collision will be recoverable as damages, whether the step is successful or not (*x*).

Average charges.

In America, average charges incurred by a cargo owner in a foreign port, by reason of a collision in American waters, were recovered as damages caused by the collision (*y*). In this country a similar claim by the shipowner was disallowed (*z*).

Remoteness of damage.

Damages which, although consequent upon the collision, do not immediately or necessarily flow from it, cannot be

(*r*) *The Argentino*, 14 App. Cas. 519. As to a contract under which the owner of the injured vessel is able to run another of his own ships, see *The City of Alexandria*, 40 Fed. Rep. 697.

(*s*) (1899) P. 165. Cf. *The Breeze*, *The Appendix*, *H.M.S. Fork*, and distinguish *The Undine*, *The Kaikoura*, all cited in *The Kate*.

(*t*) *The Racine*, (1906) P. 273; 10 Asp. 300.

(*u*) *The Gleaner*, 3 Asp. M. C. 582; *The Clarence*, 3 W. Rob. 283, 286; *The Risoluto*, 8 P. D. 109.

(*x*) *Johanssen* v. *The Eloina*, 4 Fed. Rep. 573; *Majoribanks* v. *Boyd*, *supra*, p. 27.

(*y*) *The Energia*, 66 Fed. Rep. 604.

(*z*) *The Marpessa*, (1891) P. 403. It was doubted by Gorell Barnes, J., in *The Toward*, 8th May (or April?), 1899, whether the balance of general average can ever be, as was suggested in *The Marpessa*, in the shipowner's favour.

recovered against the ship in fault for the collision (*a*). Where the master and part-owner of a vessel lost by collision claimed his probable future earnings as master, and profits as part-owner, it was held that he was entitled to nothing more, by way of damages, than the value of the ship at the time of the collision (*b*). And where a vessel put into port for repairs necessitated by collision, and her cargo of fruit was necessarily discharged to enable the repairs to be made, and reloaded, damage occasioned partly by handling and partly by natural decay during the delay was held not to be damage "consequent upon collision," within the meaning of a policy of insurance (*c*).

Loss of market.

It was not the practice to give damages for loss of market for cargo on board a ship injured by collision (*d*). The difference between the price of the goods when they arrive at the port of discharge and the price when they ought to have arrived, and but for the collision would have arrived, was regarded as so uncertain that it was held not to be the reasonable consequence of the collision, but this hard and fast rule is no longer in force, since the question now appears to be one of fact, namely, whether the loss of market is a reasonable consequence of the collision, which is the subject of the action (*e*).

Damages for loss of life.

Damages for loss of life are recoverable under Lord Campbell's Act (*f*) by the relatives or legal personal representatives of persons killed in a collision in a personal action against the person liable, but not in proceedings *in rem* (*g*). And it was held in Canada that the Vice-Admiralty Courts

(*a*) As to remoteness of damages, see Mayne on Damages, 7th ed. 48 *seq.*; 2 Smith's L. C. 11th ed. 523 *seq.*; and *per* Martin, B., in *Wilson* v. *Newport Dock Co.*, L. R. 1 Ex. 177, 187; cf. *The Gertor*, 7 Asp. M. C. 472. As to whether remoteness is a question for the registrar or the Court, see *infra*, p. 302.

(*b*) *The Columbus*, 3 W. Rob. 158; and see *The Clarence*, 3 W. Rob. 283.

(*c*) *Pink* v. *Fleming*, 25 Q. B. D. 396.

(*d*) *The Parana*, 2 P. D. 118, 124; *The Notting Hill*, 9 P. D. 105; *Smith* v. *Condry*, 1 How. 28; *The Jos. W. Dyer* v. *National Steamship Co.*, 14 Blatchf. 483. See, however, *France* v. *Gaudet*, L. R. 6 Q. B. 199, where the price of goods contracted to be sold at a profit was recovered in an action for conversion.

(*e*) *Dunn* v. *Bucknall Brothers*, (1902) 2 K. B. 614.

(*f*) 9 & 10 Vict. c. 93; 27 & 28 Vict. c. 95. As to assessment of damages by a jury in the Admiralty Division, see *The Orwell*, 13 P. D. 80.

(*g*) *The Vera Cruz* (No. 2), 9 P. D. 96; *The Theta*, (1894) P. 280; *The Circe*, (1906) P. 1; 10 Asp. 149.

Act, 1863 (26 Vict. c. 24), s. 10, did not give Admiralty jurisdiction in case of personal injury (*h*).

Damages not subject to life salvage claim.

Damages recovered by the shipowner in a collision action are not subject to a claim for life salvage services rendered to his ship in consequence of the collision (*i*).

Penalty for injuring a light-ship.

A penalty of 50*l.* in addition to damages can be recovered against a ship that injures a light-ship (*k*).

Damages where loss paid by insurers.

Full damages may be recovered by the injured party though he has been compensated for the whole or part of his loss by his insurers (*l*). But, as will be seen below (*m*), he will hold such damages as he may recover, to the extent of the sum received from his insurers, in trust for his insurers.

Damages recoverable by cargo-owner upon the contract of carriage.

Damages recoverable by a cargo-owner, or by a passenger, upon the contract of carriage, are such as "a man when making the contract would contemplate would flow from a breach of it" (*n*). This somewhat vague rule is the only one to be extracted from the cases. It is beyond the scope of this work to discuss the general subject, and it is sufficient here to state that a breach of the contract of carriage, consisting in negligence of the carrier causing collision and loss of the goods carried, has the same effect as regards liability to damages as a breach of the contract in any other respect (*o*).

The shipowner's general liability as carrier is considered elsewhere (*p*).

Effect of the rule as to division of loss upon the amount of damages recoverable.

The rule as to division of loss where both ships are in fault, whilst it extends the right to recover damages by superseding the common law doctrine of contributory negligence, also limits the amount of damages recoverable to one-half the claimant's loss. In the case of an owner of cargo on board one ship suing the other in tort, it abridges to this

(*h*) *The Enrique*, *Stockton*, V. Ad. Dig. Canada, 157.

(*i*) *The Annie*, 12 P. D. 50.

(*k*) 57 & 58 Vict. c. 104, s. 666.

(*l*) *Yates* v. *Whyte*, 4 B. N. C. 272; *Bradburn* v. *Great Western Rail. Co.*, L. R. 10 Ex. 1.

(*m*) p. 277.

(*n*) *Per* Blackburn, J., *Hobbs* v. *London & S. W. Rail. Co.*, L. R. 10 Q. B. 111, 121.

(*o*) As to the subject generally, see Mayne on Damages, 7th ed. pp. 10, *seq.* *The Parana*, 1 P. D. 452; 2 P. D. 118; *McMahon* v. *Field*, 7 Q. B. D. 591; *Lilley* v. *Doubleday*, *ibid.* 510, are amongst the later cases on the subject.

(*p*) *Infra*, p. 265.

extent his common law right to recover full damages. But it does not affect his right to recover full damages upon the contract of carriage (*q*). And if part of the loss has been recovered against the owner of the carrying ship, it would seem that the balance up to one-half the loss may be recovered against the other ship (*r*). The effect of the rule as to division of loss is fully considered in the next chapter.

The Acts limiting the shipowner's liability largely affect the amount of damages recoverable by the sufferer in a collision. These enactments also are fully considered in Chapter VII.

(*q*) See *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.*, 9 Q. B. D. 118; 10 Q. B. D. 521; *The Bushire*, 5 Asp. M. C. 416.

(*r*) In *The Demetrius*, L. R. 3 A. & E. 523, it does not appear whether the plaintiff claimed the whole or half his loss; *The Milan*, Lush. 388, and *The Hector*, 8 P. D. 218, seem to limit his right to half.

CHAPTER VI.

THE RULE AS TO DIVISION OF LOSS.

The four cases of collision.

For the purpose of determining by whom and in what shares the loss is to be borne, collisions between ships have been divided into four classes. "In the first place it (collision) may happen without blame being imputable to either party, as where the loss is occasioned by a storm or other *vis major*. In that case the misfortune must be borne by the party on whom it happens to light, the other not being responsible to him in any degree. Secondly, a misfortune of this kind may arise where both parties are to blame—where there has been want of due diligence or of skill on both sides. In such a case the rule of law is that the loss must be apportioned between them, as having been occasioned by the fault of both of them. Thirdly, it may happen by the misconduct of the suffering party only; and then the rule is that the sufferer must bear his own burden. Lastly, it may have been the fault of the ship which ran the other down; and in this case the innocent party would be entitled to an entire compensation from the other" (*a*).

This statement of maritime law of England as to the incidence of loss in case of collision does not occur in any sentence or judgment; it is an *obiter dictum* of Lord Stowell. It has, however, never been questioned as an accurate statement of the law; it has been cited with approval in the House of Lords (*b*), and it has frequently been acted upon by the Courts since its deliverance in the year 1816. It is, however, open to two criticisms. In the first place, it is not in accordance with numerous decisions of the High Court of Admiralty

(*a*) *Per* Lord Stowell (then Sir W. Scott), *The Woodrop Sims*, 2 Dods. 83, 85. In *The Lord Melville*, cited 2 Shaw's App. Cas. 395, is a dictum to the like effect.

(*b*) *Hay* v. *Le Nevc* (1824), 2 Shaw, Sc. App. Ca. 395.

during the seventeenth and eighteenth centuries. During that period the rule of division of loss was frequently applied in cases where the cause of collision was uncertain, and also where the collision was purely accidental (*c*). However, whatever doubts there may be as to the scope of the rule when Sir W. Scott thus stated it in 1816, there can be no doubt that at the present day the rule is applied only in cases of "both to blame." Secondly, recent cases show that the loss is not divided in every case where there is "want of due diligence or of skill on both sides," but that a ship is liable only for such want of diligence or skill as has caused or contributed to the loss. Upon this point there has been, if not an alteration of the law, an increasing disposition to disregard negligence which, though connected with the collision, is not its proximate cause (*d*).

History of the rule.

The Laws of Oleron.

The earliest trace (*e*) of the rule as to division of loss appears in the Laws of Oleron, a code of maritime law attributed to the twelfth century (*f*), and recognised as authoritative in this country at least as early as the fourteenth century (*g*). This code contains a provision (Art. 15) that when a ship at anchor is damaged by a ship under way, the

(*c*) The authorities for the statement in the text are a series of cases (unreported) collected from the Admiralty Court books. They are set out in the note at the foot of this chapter.

(*d*) See cases, *supra*, p. 18.

(*e*) The Book of Exodus, ch. xxi., vv. 35, 36, is cited by Cleirac in support of the rule. The passage is as follows: "And if one man's ox hurt another's, that he die; then they shall sell the live ox, and divide the money of it; and the dead ox also they shall divide. Or if it be known that the ox hath used to push in time past, and his owner hath not kept him in; he shall surely pay ox for ox; and the dead shall be his own." Cf. Laws of Alfred: "If an ox wound another man's ox, and it die, let them sell the live ox, and have the worth in common, and also the flesh of the dead one." In the seventeenth century, a seaman, seeing a ship that bore marks of having been in collision, says to her crew, "I think, brothers, you have been bulling it somewhere"; and we are told that the word "bulling," in common acceptation with seafaring men, is where one ship runs foul of another: Ad. Ct. Miscell. Books, 300, 5th Nov. 1677. "Moses' law" was also a term in use with seamen (*ibid.* No. 302, 29th Jan. 1691—2), and perhaps refers to this matter.

(*f*) 1 Pardessus, Collection des Lois Maritimes, pp. 283 *seq.*

(*g*) The Record or Roll *De Superioritate Maris et Jure Admiralitatis Angliæ* of 12 Ed. 3 (1338), refers to La Ley Oleyroun as the law of the English Admiralty: see Prynne, Animadv. 109; Selden's Mare Clausum, l. 2, c. 24. A record set out by Prynne, Animadv. 110, 117, shows that the Law of Oleron was administered in the local Court of Bristol in 24 Ed. 3 (1350). There are extant in the archives of the City of London and elsewhere in this country MSS. of these laws dating from the early part of the 14th century: Black Book, of the Admiralty, Rolls Ser. vol. 1, lxxxii.

loss on the ship shall be divided between the owners of the two ships, and the loss on the cargo between the merchants (*h*), provided the master and mariners of the ship under way swear that they did not do the damage wittingly (*i*).

This provision for distributing the loss in case of collision appears in various forms in the laws of Wisby and other Northern Codes, in the Consolato del Mare, in the Ordonnance de la Marine of Louis XIV., and in almost every code of maritime law since the Middle Ages. The division, however, is not by all the codes made in equal shares; and in some the loss appears to have been distributed in the way of general average contribution (*k*). The principle or idea underlying the rule seems to have been that collision was a peril of the sea—a common misfortune to be borne by all parties, either equally or rateably according to their interests at risk.

The English Admiralty.

The rule of dividing the loss being found in the Laws of Oleron and the early codes, the judges of the English Admiralty were at a loss to find reasons for applying it when negligence was proved against one or both ships. The idea of a collision having been caused by negligence does not seem to have been present to the minds of the framers of the Laws of Oleron; and it is not very distinct in the later codes. When, in the early part of the seventeenth century, collision cases became frequent in the Admiralty Court, the question of negligence comes into prominence; and it is just at this time that sentences dividing the loss first appear in the records. Whether, previously to this date, loss arising from collision was, in practice and in fact, divided, is uncertain. There is no record earlier than the seventeenth century of loss by collision having been divided by a sentence of the English Admiralty. In the seventeenth century there are many sentences dividing or apportioning the loss; but the reasons given for dividing the loss are various and inconsistent. Sometimes it is because the collision was not wilful, sometimes because of the difficulty of proving negligence (*l*), sometimes

(*h*) "Le dommage doit estre aprisie et party par moitié entre les deux nefs, et les vins qui sont dedens les deux nefs doivent partir du dommage entre les marchaunts": Black Book, i. 108; ii. 229, 1449; iii. 21.

(*i*) De bon gré.

(*k*) See further, as to these codes, the note at the foot of this chapter.

(*l*) Cf. Grotius, De jure belli et

because of the difficulty of apportioning the loss to the degree of fault. As the idea of liability for negligence developed, and nautical experts were called in to assist the Admiralty judges in dealing with questions of seamanship, so the necessity for finding some intelligible reason for the arbitrary *rusticum judicium* became apparent. So late as 1648 a sentence occurs in which its application is expressed to depend upon the principles of general average contribution. Not until the last century is it expressly applied to a case where both ships are found to be in fault; and as late as 1789 it is applied where neither ship was in fault. The development, in the common law courts, of the doctrine of contributory negligence probably supplied a plausible reason for the application of the rule in the case of "both to blame"; and also for confining its application to that case alone. Further information as to the history of the rule in mediæval law, and in the English Admiralty, will be found in the note at the foot of the present chapter.

Policy of the rule.

As to the policy and justice of the rule, there has been much difference of opinion. Cleirac approves of it upon the questionable ground that the law must not give any inducement to the owners of old and worthless ships to get them run down for the sake of the damages they may recover (*m*). That he had not a high opinion of its justice seems probable from his stigmatizing it as *judicium rusticorum* (*n*), a term applied to it also by Chancellor Kent (*o*). In the courts of

pacis, l. 2, c. 17, § 21: Loccentius, l. 3, c. 9, § 11; Valin, sur l'Ordonnance, l. 3, tit. 7, Art. 11, vol. 2, 183, "par la difficulté de reconnoitre de quel côté est la faute, et juger même si la faute est de nature à mériter que celui à qui elle est imputée supporte elle dommage en entier, il arrive presque toujours que le dommage reçu de part et d'autre est jugé avarie commune."

(*m*) "Est considérable que les gens de mer sont ordinairement enclins au mal et à la baraterie": Cleirac, Us et Coustumes de la Mer, p. 68; Boulay Paty, tit. 12, s 6—a low estimate of maritime morality, shared by judges of the Admiralty in recent times. See *per* Dr. Lushington, *The Lady Campbell*, 2 Hag. Ad. 5; and Sir R. Phillimore in *The Maeleod*, 5 P. D. 254.

(*n*) "Les jurisconsultes nomment et qualifient cette décision par moitié *judicium rusticorum* . . . et se pratique ordinairement par les arbitres, arbitrateurs, et amiables compositeurs, lors et quand l'intérieur des parties, ou le motifs de la question n'est pas à descouvert et conneu; ou bien quand il y a de la coulpe de part et d'autre—*aut quando sunt diversæ judicum opiniones hinc et inde probabil.* Boer. dec. 42, n. 32—tel fut le jugement reconneu tant juridic du sage Roy Salomon, qu'il donna sur la question naturele entre deux mers" (*sic*).

(*o*) 3 Kent's Comm. § 231.

this country it has been much abused. Lord Denman, C. J., said of it: "It is an arbitrary provision of the law of nations, not dictated by natural justice, nor, possibly, quite consistent with it" (*p*). And more recently Lord Selborne, C., spoke of it in similar terms (*q*). The arguments adduced in its favour are as fanciful as they are divergent. The reason given by Cleirac, that, but for it, shipowners would purposely get their ships run down, on the chance of recovering excessive damages, seems far-fetched. That the rule conduces to safety at sea, by encouraging shipmasters to take every possible precaution (*r*), or that it makes masters of large ships more careful of small ones (*s*), as has been suggested by other authorities, is at least doubtful. That it tends to avoid interminable litigation, as has been stated by a high authority in this country (*t*), is not evident. Lindley, L. J., is of opinion that, where the negligence of the two ships is equal, it works better justice than the rule of the common law. "Why, in such a case, the damages should (at common law) not be apportioned, I do not profess to understand" (*u*). In some cases, however, as applied in this country, it works positive injustice. It prevents the innocent owner of cargo on board either ship from recovering from the wrong-doing owner of either ship more than half his loss (*x*): and it works in an arbitrary and uncertain manner when combined with the statutory limitation of liability (*y*).

Merchant Shipping Act, 1854.

By 17 & 18 Vict. c. 104, s. 298, where both ships infringed the statutory steering rule, the Admiralty rule as to division of loss was, in effect, repealed. Where one of the ships, A., infringed the statutory rule, and the other, B., was in fault in some other respect (*e.g.*, look-out), A. could recover nothing, while B. recovered half his loss. If both ships were

(*p*) *De Vaux* v. *Salvador*, 4 Ad. & El. 420.

(*q*) 7 App. Cas. 799.

(*r*) Celle-ci est fondée sur une raison d'intérêt public, à fin de rendre les maîtres des navires plus soigneux à prendre toutes les précautions possibles pour éviter cet abordage: Pothier, vol. 4, p. 444, Avaries, § 155.

(*s*) See Bell's Comm. (ed. 1870, by McLaren), i. 627.

(*t*) See *per* Lord Blackburn, 7 App. Cas. 819.

(*u*) *The Bernina*, 12 P. D. 58, 89.

(*x*) See *per* Lord Blackburn, *ibid.*; *The Milan*, Lush. 388; but see *The Bernina*, 13 App. Cas. 1; *The Frankland*, (1901) P. 161, 167; and *supra*, p. 96, note (*h*), as to the authority of *The Milan*.

(*y*) *The Voorwaarts* and *The Khedive*, 7 App. Cas. 795.

in fault cargo owners could recover half their loss in all cases. This unsatisfactory state of the law was put an end to by 25 & 26 Vict. c. 63 (*z*).

Judicature Act.

Before the passing of the Judicature Act the rule as to division of loss had no application except in the Court of Admiralty. Elsewhere the rule that a person cannot recover damages for loss caused wholly or in part by his own negligence was applied in collision as in all other cases. The Judicature Act (36 & 37 Vict. c. 66), s. 25, sub.-s. 9, enacts as follows :—

> In any cause or proceeding for damages arising out of a collision between two ships (*a*), if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of common law, shall prevail (*b*).

The law, therefore, as to the incidence of loss where both ships are in fault, is now the same in all the Courts (*c*).

Colonial law.

The rule prevails in some, but not in all, the colonies and dependencies of Great Britain. In Canada, by a recent statute (*d*), it applies in the common law as well as Admiralty Courts. In St. Lucia it applies where the cause of collision is unknown, where both ships are in fault, and also in the case of inscrutable fault (*e*).

It applies to all collisions, whatever the

The rule applies to all collisions, whatever the nationality of the ships, and wherever the collision occurs. Thus it has

(*z*) Continued by 57 & 58 Vict. c. 60, s. 419. See further as to this, *supra*, p. 40.

(*a*) These words are construed liberally: *The Dunstanborough*, *supra*, pp. 14, 22; and see the insurance cases, *infra*, pp. 271 *seq.*

(*b*) The marginal note to this section is "Damages by collision at sea." The words "at sea" do not restrict the operation of the Act: *Sutton* v. *Sutton*, 22 Ch. D. 511.

(*c*) At the passing of the Judicature Acts the Admiralty rule narrowly escaped abolition. In the original draft of the Act it was provided that the common law rule should prevail; but in the passage of the bill through the House of Commons the Admiralty rule was reinstated, and ultimately made the law of the land. The reasons for preferring the Admiralty to the common law rule are not apparent. It appears to have been thought that the former was more in accord with the law of foreign countries. See Hansard's Parl. Debates, 3rd ser. vol. 216, pp. 1800, 1801. A short summary of foreign laws upon the point is appended to this chapter. It will be seen that they are widely divergent.

(*d*) 43 Vict. c. 29, s. 8 (Canada).

(*e*) Civil Code of St. Lucia (1876), Art. 2360. "If the cause of collision be unknown, or it be impossible to determine by whose fault it was caused, or if both ships are in fault, the damages are borne in equal portions by both ships."

been applied where both the ships were British (*f*); both foreign (*g*); one British and one foreign (*h*); where the collision was in British waters (*i*); in foreign waters (*k*); and on the high seas (*l*). And, as stated above, it applies whether the action is in Admiralty or in a Court not having Admiralty jurisdiction (*m*). Whether the rule is *lex loci* or *lex fori* does not appear to have been decided. No question has been raised in any case as to its universal application. In the Court of Admiralty it was administered as part of the law maritime; though it is doubtful whether it ever formed part of any general system of maritime law.

nationality of the ships, and wherever the collision occurs.

As has been already stated, the law apportions the loss where both ships are in fault by obliging each wrong-doer to pay half the loss of the other. Thus, if the loss on ship A. is 1,000*l.* and that on B. is 2,000*l.*, A. can recover 500*l.* against B., and B. can recover 1,000*l.* against A. The Courts make no attempt to administer distributive justice by apportioning the loss according to the degree of fault of which each ship is guilty (*n*). "Until the case of *Hay* v. *Le Neve* . . . there was a question in the Admiralty Court whether you were not to apportion it (the loss) according to

The loss is apportioned in equal shares, whatever the degree of fault in each ship

(*f*) *The R. L. Alston*, 8 P. D. 5; *The Monte Rosa*, (1893) P. 23; *The Vera Cruz*, 9 P. D. 88, 96.

(*g*) *The North American* and *The Teela Carmen*, Lush. 79; *Chartered Mercantile Bank of India, &c.* v. *Netherlands India Steam Navigation Co.*, 10 Q. B. D. 521; *The Washington*, 5 Jur. 1067; *The Monarch*, 1 W. Rob. 21.

(*h*) *The Voorwaarts* and *The Khedive*, 7 App. Cas. 795; *Chapman* v. *Royal Netherlands, &c. Co.*, 4 P. D. 157; *The Rona* and *The Ava*, 2 Asp. M. C. 182; *The Vera Cruz*, 9 P. D. 88; *The Seringapatam*, 3 W. Rob. 38.

(*i*) See note (*f*), above.

(*k*) *Hay* v. *Le Neve*, 2 Shaw's (Sc.) App. Cas. 395; the collision was in Scotland.

(*l*) *The Rona* and *The Ava*, 2 Asp. M. C. 182. In *The Monarch*, 1 W. Rob. 21, the collision was "at sea"; in *The Washington*, 5 Jur. 1067, off Berry Head; in *The Seringapatam*, 3 W. Rob. 38, off Beachy Head.

(*m*) It was held by the Queen's Bench Division to be applicable in the case of a collision between Singapore and Sourabaya between two ships belonging to the same owners, British subjects, but registered under a foreign flag: *Chartered Mercantile Bank of India, &c.* v. *Netherlands India Steam Navigation Co.*, 10 Q. B. D. 521.

(*n*) *Trew* v. *Peirce*, *The Mary of Poole* and *The Mary of Weymouth*, Ad. Ct. 7th July, 1692, *infra*, p. 139; *The Petersfield* and *The Judith Randolph* (1789), cited in the next case; *Hay* v. *Le Neve*, 2 Shaw's (Sc.) App. Cas. 395, and see the cases mentioned below, pp. 137 *seq.*; *per* Lord Blackburn, *The Khedive* and *The Voorwaarts*, 7 App. Cas. 795, 808; *The Margaret*, 9 P. D. 47, 51; *The Meteor*, Ir. Rep. 9 Eq. 567. The dictum of Lord Campbell in *The Friends*, 4 Moo. P. C. 314, 322, to the effect that the loss may be apportioned according to the degree of fault in each ship, is without authority. As to the law in America on this point, see *infra*, p. 130, note (*d*).

the degree in which they (the two ships) were to blame. But now it is, I think, quite settled, and there is no dispute about it, that the rule of the Admiralty is, that if there is blame causing the accident on both sides they are to divide the loss equally; just as the rule of law is, that if there is blame causing the accident on both sides, however small that blame may be on one side, the loss lies where it falls" (*o*).

Principle of the rule. Cases in which it applies.

The principle of the rule is said to be equality of participation in a loss arising from a common fault (*p*). To bring the rule into operation, both ships must be guilty of negligence contributing to the loss (*q*). But the common fault, or rather the acts of negligence committed by the ships respectively, need not, it seems, be both faults contributing to the collision. Thus a schooner at anchor, whose sole fault consisted in having her anchor suspended from her hawse in a position likely to do damage if a collision occurred, was held liable for half the loss suffered by the other vessel, a dumb barge, that negligently went foul of the schooner, and was pierced and sunk by the schooner's anchor (*r*). Nor is it necessary that there should be a collision, in the sense that one or both ships must be under way. A steamship and a dumb barge were moored at the same buoy. The fluke of the steamship's anchor, which was improperly hanging from the hawse pipe, holed and capsized the barge, as the steamship rose in the water in consequence of her cargo being discharged. The barge had been negligently left with no one on board her, and the damage might have been avoided by slacking her headfast. Both steamship and barge were held in fault, and the loss divided (*s*). So where (*t*) the negligence of one ship consisted in not beaching the injured craft after the collision,

(*o*) *Per* Lord Blackburn, *Cayzer* v. *Carron Co.*, 9 App. Cas. 873, 881.

(*p*) See *per* Lord Stowell in *The Woodrop Sims*, 2 Dods. 83; *per* Lord Selborne, C., in *The Voorwaarts* and *The Khedive*, 7 App. Cas. 795, 801. See also *The Lima*, 4 Jur. N. S. 147; *The Aurora*, Lush. 327; *The Seringapatam*, 5 Not. of Cas. 66; *The Celt*, 3 Hag. 328; and *per* Lopes, L. J., *The Bernina*, 12 P. D. 58, 95 (joint liability for joint negligence). See, however, *infra*, pp. 132 *seq.*, for other reasons given for the rule in early cases.

(*q*) *The Frankland*, L. R. 4 P. C. 529, 533; *The Rona* and *The Ava*, 2 Asp. M. C. 182; *Cayzer* v. *Carron Co.*, 9 App. Cas. 873.

(*r*) *The Margaret*, 6 P. D. 76.

(*s*) *The Dunstanborough*, (1892) P. 363, note. It is difficult to reconcile this case with *The Monte Rosa*, (1893) P. 23. Cf. *The McCallum* and *The Odette*, 7 Duval (Canada), 36.

(*t*) *The Scotia*, 6 Asp. M. C. 541; dist. *The Hornet*, (1892) P. 361.

and where (*u*) the plaintiff, though not in fault for the collision, might have lessened the consequent loss, the damages were divided. The rule has also been applied in the case of a collision between a ship being launched and another under way, where the fault in the former was committed by the people ashore in starting her on the ways at an improper moment (*x*).

Does the rule apply except where the two ships are in collision?

Whether the rule applies where the two ships are both in fault for the collision, but the collision is not between themselves, is not clear. Whether, for example, in the case of damage to a tow or to a tug by the fault of both tug and tow, or where there is a collision between ships A. and B. by the fault of one or both of them, and of a third ship C., A. or B. could recover half her loss from C., has not been decided (*y*). In America the rule has been applied where the collision was between a ship at anchor and another in tow by the fault of the tug and the ship at anchor (*z*); also, where a ship in tow and her tug were both in fault for a collision between the tow and a third ship.

In *The Digby Grand* (*a*), a tug A., towing a vessel B., was struck and injured by the tow-rope of another tug C., which, being ahead of A., was also towing B. It was held that the damage was caused by negligence of tug C. in having too long a scope of tow-line out, and also by the negligence of tug A. in not keeping clear of the tow-line. The damages appear to have been divided; but no question upon this point was raised.

In *The Celt* the Court refused to apply the rule where the fault of one ship was in no way a cause of the collision, and consisted in not standing by to assist the other (*b*), there being at that date no statutory rule corresponding to the Merchant Shipping Act, 1894, s. 422.

Where the ship in collision is in tow.

The application of the rule where one of the ships in collision is in tow, and both are in fault, has not been fully considered in this country. It seems that, whether the ship

(*u*) *The B. & C.*, 18 Fed. Rep. 543.
(*x*) *The United States*, 12 L. T. 33.
(*y*) As in *The Energy*, L. R. 3 A. & E. 48; and see *The Avon* and *The Thomas Joliffe*, (1891) P. 7.
(*z*) *The James Gray* and *The John Fraser*, 21 How. 184.
(*a*) Ad. Ct. 30th April, 1884.
(*b*) 3 Hag. 321.

in tow, or her tug, is alone in fault, or whether both tow and tug are in fault, the tow is, in a case of ordinary towage, liable for half of the damage to the third ship (*c*).

A barque in tow sank or injured a third ship. An action *in rem* was brought against the barque and her tug. Judgment by default for 4,146*l.* 10*s.* 2*d.*, the amount of the loss on the third ship, went against the barque. The action proceeded against the tug, and judgment given that both tug and third ship were in fault. It was held that the tug owners were liable for 2,073*l.* without deducting therefrom, as they claimed, a sum of 855*l.* 5*s.* 1*d.*, the net proceeds of the sale of the barque, which had been paid out of Court to the plaintiffs (*d*).

In America, where three ships were all in fault for a collision between two of them, the loss was divided between all three (*e*). There is no precedent for such an extension of the *rusticorum judicium* in England. So where a third ship was damaged by the fault of the ship in tow, and one of two tugs (belonging to the same owner) which were transporting her, the damages were divided equally between the ship in tow and the tugs (*f*). Where both a tug and her tow were in fault for damage done to the tow by collision with a pier, each was condemned in half the damages (*g*). In another American case, half damages only were given, where the injured craft was so old and weak that she sank, whereas a staunch craft would have kept afloat notwithstanding the collision (*h*).

The rule has been extended in America to cases where two ships, as a tug and her tow, are both in fault for a collision with a third, which is free from fault. The judgment in such a case goes, not against each ship for the whole of the damages, but against each ship for half the damages, with a

(*c*) *The Englishman* and *The Australia*, (1894) P. 239, where the collision was between tug and third ship.

(*d*) *The Morgengry* and *The Blackcock*, (1900) P. 1.

(*e*) *The Peshtigo*, 25 Fed. 488; *The Brothers*, 2 Biss. 104; *The Maling*, 110 Fed. Rep. 227; *The Harold*, 84 Fed. Rep. 698. And see *The Anerly*, 58 Fed. 794.

(*f*) *The Express*, 52 Fed. Rep. 890.

(*g*) *The Jonty Jenks*, 54 Fed. Rep. 1021; *The Express*, 52 Fed. Rep. 890.

(*h*) *The Gilson*, 35 Fed. Rep. 333. And see cases there cited.

remedy over against each ship in case the other fails to pay the amount in which she is condemned (*i*).

Application of the rule where liability is limited.

The application of the rule produces singular results where one or both ships limit their liability under the Merchant Shipping Acts. Two ships, *The Voorwaarts* and *The Khedive*, having been in collision, the owners of *The Voorwaarts* brought an action *in rem* in the Admiralty Division against the owners of *The Khedive*, who counterclaimed for the amount of the loss suffered by their own ship (*k*). Both ships were held in fault for the collision. The owners of *The Khedive* brought an action in the Admiralty Division to limit their liability and paid the amount of their statutory liability into Court. The damage to *The Voorwaarts* was greater than that to *The Khedive*, and the fund in Court was not sufficient to satisfy all the claims for which the owners of *The Khedive* were answerable. It was held by the House of Lords (*l*), overruling a previous decision of the Court of Appeal (*m*), that the owners of *The Voorwaarts* were entitled to prove against the fund in Court for a moiety of their loss, less a moiety of the loss of *The Khedive*, and to be paid out of the fund in respect of the balance *pari passu* with the other claimants. By the decision of the Court of Appeal (*m*), it had been held that the ship proving against the fund in Court was entitled to prove for half her loss, without deducting anything in respect of her liability to the other ship.

The Voorwaarts and *The Khedive*.

The question to be decided was whether in such cases there are two liabilities in damages, one on the part of each shipowner to the other shipowner for half the loss of the latter, or only one liability, namely, a liability on the part of

(*i*) *The Sterling* and *The Equator*, 16 Otto, 647; following *The Alabama* and *The Gamecock*, 2 Otto, 695.

(*k*) *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.*, 7 App. Cas. 795.

(*l*) Lord Bramwell (in an opinion which was written by him, but not delivered; see 7 App. Cas. note, pp. 826, 827) points out that some of the results following from the decision of the House of Lords are of doubtful equity or justice; that by it the owners of *The Voorwaarts* were as well off as if their ship were blameless. And Baggallay, L. J. (4 P. D. 170), points out that the loss to the owners of *The Khedive* was the same as if their ship were alone in fault. Thus, where both ships are in fault, and one limits her liability under the statute, her owners, inasmuch as they lose the right to recover damages against the other ship, are indirectly answerable in damages to a greater amount than the statutory limit.

(*m*) *Chapman* v. *Royal Netherlands Steam Navigation Co.*, 4 P. D. 157.

the owner of the ship that had done the greater damage, for the difference between half the loss of the one ship and half the loss of the other—in the words of Lord Selborne, "a moiety of the excess of the aggregate loss beyond the point of equality." It was held that the terms in which the rule of the Admiralty was laid down in *The Woodrop Sims*, *The Lord Melville*, *The Petersfield* and *The Judith Randolph*, and *Hay* v. *Le Neve*, showed that in substance there was but one action and one final judgment; and that such final judgment was for the balance between a moiety of the loss of the one and a moiety of the loss of the other. The later cases of *The Washington* and *The Catherine* (*n*), *The Seringapatam* (*o*), and *The Teela Carmen* (*p*), were cited as confirming this view.

The effect of this decision will be best seen by an illustration. Let the loss on ship A. be 10,000*l.*, the loss on ship B. 20,000*l.*, the loss on cargo on board B. 40,000*l.*, and the statutory liability of A. 24,000*l.* According to the decision of the House of Lords the owners of B. recover 4,800*l.*; that is to say, A. is entitled to recover 5,000*l.*, being half his damages, B. is entitled to recover 10,000*l.*, being half of his damages, and the cargo owner 20,000*l.*, being half of his damages. But from B.'s 10,000*l.* must be deducted A.'s 5,000*l.*, leaving 5,000*l.* to prove against the fund in Court, which 5,000*l.* is one-fifth of such fund. In practice the proportions are seldom so simple, but the above facts sufficiently illustrate the existing law, the main feature of which is that the higher claim, less the opponent claim, is recoverable against the fund in Court. Another result of the decision of the House of Lords is that, where the loss on each ship is the same, and each ship limits her liability, the whole of the sum paid into Court is divisible between the owners of cargo on board the two ships, whilst the shipowners get nothing. On the whole, therefore, the present law favours cargo-owners at the expense of shipowners.

(*n*) 5 Jur. 1067.

(*o*) 3 W. Rob. 38, 44.

(*p*) Lush. 79. To these may be added the early cases of *Williams* c. *Marten* and *Rennen* c. *Humble*, Ad. Ct., 1675 and 1698, where the sentence was in terms for the balance of loss. See *infra*, p. 139. In Holland the same decision was arrived at in a case mentioned in Bynkershoek, Quæst. Jur. Priv. l. 4, c. 21. See also *The Sapphire*, 18 Wall. 51; *The Manitoba*, 15 Davis, 97.

It follows from the above decision that where both ships are to blame there arise, not cross liabilities, but a single liability for a balance upon the owners of the ship that has sustained the smaller damage: and therefore the shipowners to whom the balance is payable are not entitled, whether on behalf of themselves or of their underwriters on ship, to recover against underwriters who have agreed to indemnify them against "loss or damage to any other vessel," they being under no liability in respect of such loss or damage (*q*). Right of insured under running-down clause.

Where two ships, A. and B., are both in fault for a collision, and the fault of B. is entirely that of the compulsory pilot (*r*) in charge of her, the owners of B. will recover half their loss against A., whilst the owners of A. can recover nothing. Her owners are not liable at law, and no damage lien attaches to the ship. But the fault of the pilot affects the owners of B., and the owners of cargo on board her, to this extent: it brings into operation the rule as to division of loss, and prevents them from recovering more than half their loss (*s*). Moreover, though successful upon their defence of "compulsory pilot," they will obtain no costs (*t*). In the case last mentioned the owners of the ship in charge of the compulsory pilot are entitled to judgment for half their loss, without deducting anything on account of the loss of the other ship. The principle of the decision in *The Khedive* (*u*) does not apply in such a case. Division of loss where one ship is in charge of a compulsory pilot.

The case of *The Hector* (*x*), in which these points were decided, was as follows:—A collision occurred between *The Augustus* and *The Hector*, caused by the fault of the crew of *The Augustus* and the fault of the compulsory pilot of *The Hector*. The rule as to division of loss was applied. The loss of *The Augustus* was 3,000*l*.; that of *The Hector* 8,000*l*. It was contended that the owners of *The Hector* could recover only 2,500*l*. (*i.e.*, half her loss, namely, 4,000*l*. less 1,500*l*., half the loss of *The Augustus*); that this resulted from the *The Hector*.

(*q*) *The London Steamship Assurance Association* v. *The Grampian Steamship Co.*, 24 Q. B. D. 32; on appeal, *ibid.* 663.

(*r*) See below, p. 214, as to compulsory pilotage.

(*s*) *The Hector*, 8 P. D. 218. That the owners of cargo on board B. can recover only half their loss follows from *The Milan*, Lush. 388. But see as to this case, pp. 47, 130.

(*t*) *The Rigborgs Minde*, 8 P. D. 132.

(*u*) 7 App. Cas. 795.

(*x*) 8 P. D. 218.

decision in the case of *The Khedive* (*y*), considered with reference to 17 & 18 Vict. c. 104, s. 388. The Court of Appeal declined to apply the principle of the decision in *The Khedive*, a case where the owners of both ships were liable, to the case before them, in which the owners of only one ship were liable (*z*).

Cargo-owners not bound by shipowners' agreement of both to blame.

An agreement between the shipowners that both ships, A. and B., were in fault, does not prevent the owner of cargo on board B., in an action by the owner of A. to limit his liability, from asserting that A. was alone in fault; and he is entitled to an issue upon that question (*a*).

Collision between ships of the same owner; rights of owners of cargo.

The rule as to division of loss where both ships are in fault has been held to apply where a cargo-owner was suing the shipowner for loss incurred in a collision between the carrying ship and another ship belonging to the same owners, caused by the fault of both ships (*b*). The shipowner was protected from liability for the negligence of those in charge of the carrying ship by the terms of the bill of lading. It was held that he was nevertheless liable in tort (*c*) for the negligence of those on board the other ship; but his liability was for half only of the loss; in respect of the other half of the loss, it was held that he was relieved by the bill of lading.

The rule gives and also takes away or abridges a remedy.

It follows from the above considerations that the rule as to division of loss is not merely a restriction upon the common law doctrine of contributory negligence. It not only gives a remedy where by the common law there is none, but it also abridges a right which formerly existed at law, but now does not. When both ships were in fault, the innocent owner of cargo on board either ship could formerly, in a common law action for tort, have recovered the whole of his loss against the owners of either ship. In Admiralty it was held that he

(*y*) *Stoomvaart Maatschappy Nederland* v. *P. & O. Steam Navigation Co.*, 7 App. Cas. 795.

(*z*) The dictum of Brett, L. J., in *Chapman* v. *Royal Netherlands Steam Navigation Co.*, 4 P. D. 157, 184, to the effect that the phrase, "answerable in damages" in sect. 54 of 25 & 26 Vict. c. 63, is applicable to the last stage of the litigation between the ships, that is, to half the difference between the losses on the two ships respectively, cannot, after this decision, be supported.

(*a*) *The Karo*, 13 P. D. 24.

(*b*) *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.*, 10 Q. B. D. 521.

(*c*) Cf. *Hayn* v. *Culliford*, 4 C. P. D. 182.

could recover no more than half his loss against the owner of the other ship (*d*); and since the Judicature Acts the rule is now the same at law. In an action upon the contract of carriage, the rule as to division of loss has no application. The cargo-owner can, subject to the terms of the bill of lading, recover full damages (*e*). *The Hector* (*ubi supra*) also shows that the innocent owner of a ship injured by fault on the part of her compulsory pilot, and also on the part of

Cargo-owner can recover only half his loss in tort

(*d*) *The Milan*, Lush. 388. So also in Canada: *The Eliza Keith* and *The Langshaw*, 3 Quebec L. R. 143. *Qu.* whether these cases are affected by *The Bernina*, 12 P. D. 58, 83; *The Frankland*, (1901) P. 161, 167.

The American Courts have not followed *The Milan*: see *The Britannic*, 39 Fed. Rep. 395; *The Atlas*, 3 Otto, 302; *The Juniata*, *ibid.* 337; *The New York*, 175 U. S. Rep. 187. It is held that the cargo-owner is entitled (subject to the statutory limitation of the ship-owner's liability) to recover the whole of his loss against one or other, or both, of the shipowners. In the first instance the decree goes against each shipowner for half the loss; but each shipowner has a remedy over against the other in respect of any balance of the damages which the latter fails to discharge: see *Coombs* v. *Duncan*, 1 Fed. Rep. 733; *The Doris Eckhoff*, 41 Fed. Rep. 156. This applies also to damages for loss of life or personal injury, where such damages are recoverable: *The Max Morris*, 30 Dav. 1. But if one of the ship-owners, pending suit, purchases at an undervalue the claims of his cargo-owners, he cannot prove against the other ship for more than the price he paid for such claims: *The Portia*, 64 Fed. Rep. 811. In *The Victory* and *The Plymothian*, 68 Fed. Rep. 395, where the fault of *The Victory* was greater than the fault of *The Plymothian*, the decree went against *The Victory* for her full value, though it was more than half the value of the cargo lost in *The Plymothian*, and against *The Plymothian* for the balance. On appeal, however, the Supreme Court varied this decree by finding *The Victory* alone in fault: S. C. on app., 168 U. S. Rep. 410.

In *The Mary Ida*, 20 Fed. Rep. 741, the damages were apportioned between the two ships in the ratio of three to one, according to the degree of fault in either ship. Whether this case would be upheld by the Supreme Court seems doubtful. See *The Maling*, 110 Fed. Rep. 227; *The David Dows*, 16 Fed. Rep. 154. In *The Hercules*, 20 Fed. Rep. 205, the owner of one of the ships, against whom his cargo-owners had recovered full damages, was allowed to deduct half the amount from the damages payable by him to the owner of the other ship.

The cargo-owner is entitled to full indemnity, and is in no case liable for loss on the other ship; not even when he is owner of ship as well as of the cargo in her. And in the same case, and for like reasons, he cannot set off his loss on cargo against damages payable by him in respect of injury to the other ship: *The Bristol*, 29 Fed. Rep. 867.

Where the two ships are both in fault for collision with a third, they are jointly and severally liable; and if one only is sued, the decree goes against her for the whole of the damages: *The Atlas*, 3 Otto, 302; *The Charles Allen*, 11 Fed. Rep. 317; but there is a right of contribution between them; and either, if sued separately, may apply to bring in the other: see *infra*, p. 193.

The rule as to division of loss has a wider application in America, and is not confined to the case of collision, and has been applied where a ship was lost ashore by the fault of her tug and third parties: *The Valley America*, 26 Fed. Rep. 174.

(*e*) *The Bushire*, 5 Asp. M. C. 116; the dictum of Brett, M. R. (10 Q. B. D. 538), applies to actions in tort. As to the law in America on this point, see p. 268, *infra*.

those on board the other ship, is, by the rule of division of loss, deprived of the right which, it seems (*f*), he formerly had, of recovering full damages against the owners of the other ship.

The rule applies where a ship is "deemed to be in fault."

The rule of division of loss applies where one of the ships is guilty of negligence in fact, and the other is "deemed to be" in fault for infringement of the regulations (*g*); but not of course where two ships are to blame for a collision with a third; in such a case judgment goes against both for the whole loss (*h*).

Not in case of joint tort-feasors.

Where A., one of two ships A. and B., which had been in collision by the fault of both, was sued by a third ship C., which in consequence of the collision A. had struck and injured, and judgment had been recovered against A. by C. for the amount of her loss, it was held that A. could recover from B. half the amount of the damages she had paid to C., in addition to half her own loss in the collision with B. The rule that there is no contribution between wrong-doers has no application in such a case (*i*).

Nor under Lord Campbell's Act.

Nor does it apply to actions under Lord Campbell's Act; consequently the plaintiff, if not himself in fault, may, although both ships were in fault, recover full damages. The High Court of Admiralty had no jurisdiction to entertain these actions, and the Judicature Act, 1873, s. 25, sub-sect. 9, did not apply the rule of division of loss to them (*k*). But

(*f*) *Qu.* whether the fault of the pilot is contributory negligence affecting the shipowner: see *Spaight* v. *Tedcastle*, 6 App. Cas. 217; and cases p. 24.

(*g*) *The Voorwaarts* and *The Khedive*, 7 App. Cas. 795; *Chartered Mercantile Bank of India, &c.* v. *Netherlands India Steam Navigation Co.*, 10 Q. B. D. 521; *The Hochung* and *The Lapwing*, 7 App. Cas. 512; *The Vera Cruz* (No. 1), 9 P. D. 88 (revd. on another point, 9 P. D. 96).

(*h*) *The Avon* and *The Thomas Joliffe*, (1891) P. 7; *The Englishman* and *The Australia*, (1894) P. 239; (1895) P. 212.

(*i*) *The Frankland*, (1901) P. 161.

(*k*) *The Bernina*, No. 2, 11 P. D. 31; 12 P. D. 58; H. L., *nom. Mills* v. *Armstrong*, 13 App. Cas. 1. In *The Vera Cruz* (No. 1), 9 P. D. 88, Butt, J., applied the rule in such an action where the proceedings were *in rem*. This part of his judgment was rendered inoperative by the Court of Appeal holding that there was no jurisdiction *in rem* under Lord Campbell's Act (9 P. D. 96). And see *Belden* v. *Chase*, 43 Dav. 674, 691; *The Queen*, 40 Fed. Rep. 867 (seamen, common employment). The rules as to contributory negligence have, it is held, no application in a Court of Admiralty, which decides according to equity and conscience. Thus, although a person injured on shipboard, partly by his own fault, does not recover full damages, he recovers his hospital bill and loss of wages: *The Explorer*, 20 Fed. Rep. 135; *The Wanderer*, *ibid.* 140.

in a case (*l*) in Ireland, when a pilot brought an action *in personam* in the King's Bench Division against the owners of another vessel, which had been in collision with that of which he was in charge, and it was found that both vessels were to blame, it was held by a majority of the Court that the rule as to division of loss applied—this being a proceeding within the meaning of the Judicature Act, 1873, s. 25, sub-sect. 9. There can be no question that the Admiralty rule was not intended to alter the common law principle that a plaintiff cannot recover any damages if he has himself been guilty of contributory negligence; the above decision does not seem to be in accordance with the judgment of Lord Gorell in *The Circe* (*m*).

Whether the rule applies where one might with ordinary care have avoided the collision.

The question whether the doctrine of *Davies* v. *Mann* applies in Admiralty—whether in the case of a collision between ships, a ship guilty of negligence such as that of the donkey-owner in *Davies* v. *Mann* can recover more than half her loss—has already been considered (p. 16).

Note.

History of the Rule as to Division of Loss.

A provision for sharing or distributing loss to ships and cargoes arising from collision is contained in many of the codes of maritime law from the Rolls of Oleron to the present day. Some early codes are said to date from the thirteenth century; but most, if not all, of them are founded upon the Oleron Code. The best known is the Code of Wisby, a town in Gottland, and an important centre of commerce in the thirteenth and fourteenth centuries. This code was printed in 1505, and an English translation is contained in the "Dominion of the Sea" (ed. 1705).

The Wisby Code.

The provision in the Wisby Code, and in the other codes of northern Europe, usually takes the form of a special enactment for the case of collision between a ship anchored or moored in harbour and another under way coming into the harbour. In such a case the ship under way is required to make good the

In America the rule of division of loss is applied in cases of personal injury: *The Max Morris*, 30 Dav. 1.

(*l*) *Boucher* v. *The Clyde Shipping Co.*, Ir. Rep. 1904, II. 129.

(*m*) *The Circe*, (1906) P. 1.

whole of the damage to the ship brought up, unless her master and crew, as in the Oleron Code, swear that the collision was accidental, in which case she is to pay only half the loss. The provision occurs in the laws of Wisby (Pardess. i. 401, 501; iii. 114, 361; Black Book, Rolls Ser. iv. 87, 125, 284); of Hamburg (Pardess. iii. 345, 348); Riga (Pardess. iii. 506); Lubeck (Pardess. iii. 402; Black Book, iv. 373); Dantzic (Black Book, iv. 435); Bruges (Black Book, iv. 435); Damme (Pardess. i. 379); of the Hanseatic League (Pardess. ii. 551); and of the Netherlands (Pardess. iv. 34, 85); and in some of these codes it is not confined to the case of one of the ships being at anchor.

The Hamburg, Hanseatic, and other Codes.

The language of the different codes varies as to details, and the effect of the rule is modified in different ways. Thus, the Hamburg Code provides that the limit of liability shall be the value of the ship that does the damage and her apparel; and, further, that the cargo-owner shall in no case be liable. The Netherlands and Hanseatic Codes expressly provide that, if the ship under way is herself damaged, she shall bear her own loss; and this is implied in other codes. The Hanseatic Code is not clear as to the shares in which the loss on the ship at anchor is to be borne, and in certain cases it is to be adjusted by arbitrators. It further provides that if a ship slips from her anchor to avoid another driving on her, the loss of anchor and cable is to be general average. This provision seems to be the basis of the decision in the great case of *Bury* c. *Gold*, *infra*, p. 137. The Wisby, Hanseatic, and the Netherlands Codes contain special provisions as to damage done by unbuoyed anchors—a fruitful source of mischief in the shallow and dry harbours of northern Europe. If the unbuoyed anchor damaged another ship, the ship it belonged to had to pay the whole of the loss; but if the buoy had been accidentally carried away, she paid half only.

Danish Code.

Danish Codes (Pardess. iii. 237, 261, 289) of 1508, 1561 and 1683 divide the loss of an accidental collision according to the decision of arbitrators; but in the case of collision between a ship under way and another at anchor, the former is to pay one-third of the loss to the latter. A similar provision occurs in a Swedish code of the seventeenth century (Pardess. iii. 129, 173). A like division of loss is adopted in a code stated to have been in force in Malacca in the thirteenth century, in case of collision in bad weather between two ships sailing in company (*voyage de conserve*) for protection against pirates. In another Eastern code the proportion of her loss recoverable by the injured ship is two-thirds

Eastern codes.

(Pardess. vi. 409, 459). These codes are said to be founded on customs in force in the East. They purport to have been promulgated by Mahmoud Schah, the Mahomedan conqueror of the Eastern Islands.

Consolato del Mare.

By the *Consolato del Mare*, the code in use in the south of Europe, the ship under way is to pay the whole of the loss of the ship at anchor or moored, unless the collision is due to stress of weather, in which case the loss is to be borne as arbitrators shall decide. If the ship at anchor shifts her moorings after the other has brought up, the latter is to pay one-half of the loss. (Pardess. ii. 174 *seq.*)

Ordonnance of Louis XIV.

By the Ordonnance of Louis XIV. the loss was divided equally in case of accidental collision. Some doubt existed as to whether it should not be apportioned as general average, but Valin states that the better opinion was in favour of an equal division. (Valin, Sur l'Ordonnance de la Marine, l. 3, tit. 7; Arts. 10, 11; *Ibid.* vol. ii. 178.)

Equal or proportionate division.

The vague language of the Northern codes as to the manner in which, in case of accidental collision, the loss was to be distributed, gave rise in the seventeenth century to difference of judicial opinion. Bynkershoek describes the strong dissent of his colleagues, the judges of the Supreme Court of the Netherlands, when he endeavoured to persuade them to assent to a proportionate rather than an equal division of the loss: "Memini me senatore et de geometricâ proportione perorante reliquos senatores (23 Nov. 1629) obstupuisse atque si Jovis ignibus icti essent" (Bynk. Quæst. Jur. Priv. l. iv. c. 20.)

The rule of division of loss in English law.

The history of the rule as to division of loss in the English Admiralty, so far as can be gathered from existing records, is as follows. The continuous series of Admiralty Court records begins about the year 1530. During the sixteenth century no trace of the rule appears in any sentence of the Court. Once only in the sixteenth, and once in the seventeenth century awards of arbitrators are mentioned giving partial damages to the owners of ships sunk or injured by collision (*n*). In all the cases prior to 1614, (they are not numerous,) in which sentences were delivered in collision suits, either full damages were given or none. In 1614 (*o*) occurs the first sentence for half damages. The

(*n*) In the Admiralty Court of Ipswich during the 16th and 17th centuries collision seems to have been dealt with as a criminal offence: "Presented, the hurting of one vessel by another running against the same, and fined 2*s.* 6*d.*"; Annalls of Ipswich, by Nat. Bacon, ed. W. H. Richardson, 1884, p. 421; and similar entries, *ibid.* pp. 425, 539.

(*o*) *Ruckton* c. *Lambton*, Ad. Ct. Rec. Libels, File 76, No. 33. The

defendant, being alone in fault, was condemned by Dr. Dunn in half the loss to cargo on board the other ship, and in the whole of the loss to the ship. This sentence was affirmed on appeal (*p*). In the same year, however, full damages are given in another case (*q*), and, apparently, again in 1623 (*r*). In 1626 (*s*) half damages are given by Sir Henry Marten against a defendant who lay at anchor in the middle of the Thames for two tides and refused to weigh his anchor, which afterwards holed the plaintiff's ship. In 1628 (*t*) Sir H. Marten gives full damages for a collision caused by the defendant's fault: also in two cases of 1632 (*u*). In 1630 (*x*) the same judge gives sentence for half damages, where the defendant's ship was alone in fault; and in the following years three other sentences to the same effect (*y*). In 1635 (*z*) there is a sentence for full damages; and two others follow, to the like effect (*a*). In 1639 (*b*) the innocent shipowner and cargo-owner recover only half their losses; but in another (*c*) case of the same year the shipowner recovers full damages.

In 1642 Dr. Zouch was judge of the Admiralty. By a sentence of that year implying, but not expressly finding, fault in the defendant's ship, he gives half damages (*d*). By another sentence (*e*) of 1643, for reasons not stated—"ex certis causis nos et

ship arrested in this case belonged to the owner of the wrong-doing ship, but was not the wrong-doing ship herself. The plaintiffs had sued for the same matter in a Dutch court, and had withdrawn from the suit because judgment was given for only half their loss: Miscell. Bundles, Ser. II. bdle. 227.

(*p*) Miscell. Bundles, Ser. IV. (1613-7 bdle.).

(*q*) *Verduen* c. *March*, File 76, No. 463. This and the following references are to the Files of Libels, Admiralty Court Records, at the Public Record Office.

(*r*) *Cruse* c. *Wynne*, File 82, No. 56; *Baker* c. *Corditt*, File 82, No. 53.

(*s*) *Bunne* c. *Williamson*, File 84, No. 463.

(*t*) *Thredgold* c. *Goslinge*, File 85, No. 325.

(*u*) *Sneddall* c *Leigh*, File 90, No. 268; *Rothwell* c. *Lucas*, File 90, No. 265. In these cases the collisions are stated to have been caused "culpâ et negligentiâ," or "culpâ incuriâ et supremâ negligentiâ." In another suit for negligence the loss is stated to have been caused "culpâ negligentiâ, vel incuriâ, vel occasione" of the defendant. See File 88, No. 157.

(*x*) *Rutter* c. *Ribatira*, File 89, No. 241.

(*y*) *Stevens* c. *Trehawke*, File 91, No. 27; *Clarke* c. *Beck*, File 92, No. 195; *St. John* c. *Grant*, File 92, No. 51.

(*z*) *Page* c. *Haslewood*, File 93, No. 243.

(*a*) *Leigh* c. *Ireland*, File 96, No. 153; *Gardiner* c. *Bright*, File 97, No. 174, where the collision is stated to have been "de industriâ seu culpâ."

(*b*) *Colthurst* c. *Sandall*, File 98, No. 58; *Wilkinson* c. *Clarke*, File 98, No. 107.

(*c*) *Seagars* c. *The Haddock*, File 101, Nos. 37, 161. In this case the owner of cargo on the innocent ship had recovered full damages against the shipowner upon the bill of lading.

(*d*) *Keddye* c. *De Frances*, File 106, No. 29.

(*e*) *Kinge* c. *Johnson*, File 106, No. 121. The same words are used

animum nostrum in hâc parte moventibus"—out of 1,800*l.*, the full damages, he gives 400*l.* only (*f*). In this sentence the words "per crassam suam negligentiam" are struck out. The loss was caused by the defendant letting go his anchor and breaking, or fouling. that of the plaintiff's ship, whereby she drove ashore with her cargo and was damaged. In 1643 (*g*) there is a sentence in which the words "incuriâ et negligentiâ" are struck out, giving half damages. By another sentence (*h*) of the same year, the full damages being 680*l.*, Dr. Sames—"ex certis causis" as before—gives 320*l.* only; and by another (*i*) where the loss is 30*l.* he gives 12*l.* 10*s.* only.

In both these sentences words imputing fault to the defendant are struck out. By sentences of 1644 and 1645 full damages are given in one case (*k*), and half damages in another (*l*). In both negligence is expressly found against the defendant.

In 1647 (*m*) half damages are given, for the first time, because the cause of loss is uncertain. In the same year there is a unique case (*n*) where, no fault being found in either ship, the owners of the ship that sank, and the owners of cargo on board her, recovered, by twenty separate sentences, half their respective losses by way of general average contribution against the owners of the other ship. The collision was at sea, and the defendant's ship was held fast to the plaintiff's by the anchor of the latter, which had holed her. In order, as the sentence states, to save the defendant's ship, her crew cut her clear by severing her cable and sending the plaintiff's ship adrift, whereupon she sank with her cargo. In the next year (1648) (*o*) half damages are given for an anchor and cable lost through the other ship chafing it—not, as it appears by negligence—the word "incuriâ" being struck out of the sentence. But in the same year a ship recovers

in a sentence for *pro ratâ* freight, File 106, No. 79.

(*f*) Partial damages seem to have been sometimes given by arbitrators. Thus, in 1687, there is an award that the loss was caused as to one-third by ship A., as to one-third by stress of weather, and that the remaining third should be paid by the defendant, "the aggressor and moving cause," File 123, No. 151.

(*g*) By Dr. Sames, surrogate for Dr. Zouch. *Belitha* c. *Burwood*, File 106, No. 194.

(*h*) *Blowers* c. *Starlinge*, File 106, No. 227.

(*i*) *Powell* c. *Trevyne*, File 107, No. 34.

(*k*) *Creame* c. *Yaxley*, File 107, No. 68.

(*l*) *White* c. *Walker*, File 107, No. 189.

(*m*) By Drs. Clerk and Exton, Commonwealth Judges: *Grube* c. *Stagg*, File 108, No. 342.

(*n*) *Bury* c. *Gold*, File 108, Nos. 350 *seq.* These sentences were varied on appeal by consent, by substituting half for full damages. See one of the sentences of the Delegates printed in Marsden's Admiralty Cases, p. 235.

(*o*) *Pooty* c. *Rudd*, File 109, No. 118.

full damages for her loss by striking upon the other ship's unbuoyed anchor (*p*); and four sentences for full damages against defendants' ship, alone in fault, follow (*q*). In 1654 (*r*) a defendant is dismissed because no fault is proved against him; and against a defendant in fault full damages are given (*s*).

Next year (*t*) (1655) half damages are given for a collision caused without fault, and also where the cause is uncertain (*u*). In 1659 (*x*) a ship damaged by an unbuoyed anchor recovers half her loss; and in 1663 (*y*) a like sentence is passed with an express finding that the collision was caused by stress of weather, and that both ships had done all they could to avoid it. But for loss caused by the fault of the defendant full damages are given (*z*).

In 1664 Dr. Exton, in two cases where the collision was accidental—"casu fortuito"—gave half damages (*a*); and in 1668, where a ship with her keel accidentally cut the cable of another, Sir Leoline Jenkins gave half the value of the lost anchor and cable (*b*). In 1673 (*c*) nautical experts—*consilium artis nautice peritorum*—are for the first time mentioned. They concur in a sentence finding the defendant ship alone in fault, and the judge, Sir Leoline Jenkins, gives full damages. In 1675, in two cases (*d*) where the cause of collision is stated to be uncertain, Sir Leoline Jenkins, applying, as he states, the general maritime law—"nos dispositionem juris maritimæ in hâc parte apud omnes gentes receptissimi sequentes" gives half damages. In one of these cases, *Williams* c. *Marten*, the decision in *The Khedive* (*e*) is anticipated, and both ships having been damaged, one more extensively than the other, sentence goes against the latter

(*p*) *Knott* c. *Foulgier*, File 109, No. 119.

(*q*) *Arthur* c. *Ford*, File 110, No. 82; *Slaney* c. *Hopwood*, File 110, No. 80; *Crandley* c. *Porteer*, File 109, No. 313. There was an appeal in this case; with what result does not appear: S. P. Dom. Calendar, 1650, p. 359; *Brake* c. *The Piper*, File 111, No. 294.

(*r*) *Dorvill* c. *Tresaur*, File 112, No. 319.

(*s*) *Hall* c. *Hill*, File 112, No. 240.

(*t*) *Yaxley* c. *Delavall*, File 113, No. 67; "incuria" struck out of the sentence. Affirmed by the delegates; Miscell. Bundles, Ser. IV., 1650-57 bdle., No. 76.

(*u*) *Lawe* c. *Lee*, File 113, No. 223; *Cooper* c. *Breeze*, File 114, No. 34.

(*x*) *Swyre* c. *Church*, File 114, No. 86.

(*y*) *Martyn* c. *Greene*, File 115, No. 95.

(*z*) *Jocelyn* c. *Wickett*, File 115, No. 91. Both these last sentences are by Dr. Exton.

(*a*) *Peers* c. *Cole*, File 116, No. 4; *Haberdyne* c. *Reeves*, File 116, No. 3.

(*b*) *Parke* c. *Sorrell*, File 116, No. 160.

(*c*) *Cornwallis* c. *Noden*, File 117, No. 145. Affirmed on appeal, Miscell. Bundles, Ser. IV., 1677-79 bdle. 27, No. 9.

(*d*) *Potter* c. *Keeble*, *Williams* c. *Marten*, File 117, Nos. 141, 144. Both affirmed, bdle. 27, *supra*, Nos. 11, 14.

(*e*) *Supra*, p. 128.

for half the balance of the loss. In 1677 (*f*) Sir Richard Lloyd, sitting as surrogate for Sir L. Jenkins, condemned one ship in half the loss of the other, because, by reason of the contrariety of witnesses and difficulty of proof, the loss was to be deemed to have been caused by accident (*casu fortuito*). In 1678 (*g*) half damages are given by the same judge, because it was not proved that the collision was wilful—*ex studio aut malitiâ aut invidiâ*; but in the same year (*h*), and again in 1690 (*i*), where it was by negligence—*negligentiâ vel ignorantia*—full damages are given. There is extant a certificate of 1690 by Sir Charles Hedges, the judge of the Admiralty, that at that date the rule of division of loss was applied in all cases where the cause of loss was doubtful (*k*). In 1692 (*l*) the decree states that the collision was accidental, and that therefore the loss was to be deemed to have been in some measure (*quadamtenus*) caused by the fault of the other ship (*m*). In 1695 the rule was twice applied by Sir Charles Hedges. In one (*n*) case no reason is given; in the other (*o*), it is found that the plaintiff's loss was caused by the fault of the master and crew of the other ship; therefore (the decree continues) the owners of the defendant ship are liable to make good to the plaintiffs a certain part of their loss. "Cum autem ob incertitudinem ex varietate et contrarietate depositionum testium hinc inde examinatorum proveniente, certa pars damni, quota est quam altera pars alteri dedit, liquidari haud possit, dominus judex antedictus dispositionem juris maritimi apud omnes receptissimi sequens," condemns the defendant owners in half the loss of the plaintiffs. Though no fault is found against the plaintiffs, the wording of the decree rather implies it. In 1698 (*p*) a case occurs where each ship suffered injury, and each claimed damages against the other. Sir C. Hedges made a decree that each ship should pay to the other half her loss. No reason is given for dividing the loss. In 1702 (*q*) Dr. Bramston, surrogate

(*f*) *Brown* c. *Gravenor*, File 118, No. 43. Affirmed, bdle. 27, *supra*, No. 27.

(*g*) *Jermin* c. *Shadforth*, File 119, No. 116.

(*h*) *Newman* c. *Lacy*, File 119, No. 151.

(*i*) *Russell* c. *Joad*, File 124, No. 41.

(*k*) Miscell. Books, 1012, *ad. med.*

(*l*) *Trew* c. *Peirce*, Marsd. Ad. Ca. 264.

(*m*) The note of the decree is as follows: "Ex quo quod sibi constat, dicto navi collisionem ex Peirce et nautarum suorum culpâ et negligentiâ quadamtenus pervenisse." Peirce was master of the ship sued.

(*n*) *Fantley* c. *King*, Ad. Ct. Ass. Book, 4th Feb. 1695.

(*o*) *Beckham* c. *Chapman*, *ibid.* 20th Jan. 1695; *Franckes* c. *Dingslach*, Act Book, No. 187, fo. 155*a*, is a similar case of this period (1693-97).

(*p*) *Rennen* c. *Humble*, Ad. Ct. Ass. Book, 9th May, 1698; 26th May, 1698.

(*q*) *Mason* c. *Johnson*, Ad. Ct. Ass.

for Sir C. Hedges, makes a decree against the ship sued, she being found to be alone in fault. The reasons given are similar to those in *Beckham* c. *Chapman*, *supra*. In 1706 two similar cases occur (*r*), no fault being found in either case against the plaintiff's ship. In the same year (1706) (*s*) there is a case where, fault being found against both ships, the loss is divided equally, for the reason given in *Beckham* c. *Chapman*, namely, the difficulty of proving the loss properly attributable to the fault of each. The decree was affirmed by the Delegates. In 1712 (*t*) the Delegates varied a decree of Sir C. Hedges by which he had dismissed the defendants without costs, by declaring that they should pay half the plaintiff's loss. No reason is given. In 1726 (*u*) Sir Henry Penrice found that the defendant had failed to prove his case (*defecisse in probationibus*), and dismissed the defendant without costs. The question of applying the *rusticum judicium* seems to have been raised; for in the registrar's minute book is a note (afterwards struck out) that a day was assigned for discussing the question "whether the *rusticum judicium* can be admitted in this case?" In 1746 (*x*) the same judge divided the loss where the cause of the collision, "from the great contrariety of the evidence," was uncertain.

History of the rule since 1746.

Noble c. *Wilson* is the last appearance of the *rusticum judicium* until 1789, the year in which the well-known case of *The Petersfield* and *The Judith Randolph* (*y*) occurred. It is singular that in that year three cases were decided in which the rule of division of loss was applied; in two of them by the High Court of Admiralty, in the other by the Delegates.

The Petersfield and *The Judith Randolph* (1789).

On the 20th of May, 1789, Sir James Marriott, Judge of the Admiralty Court, in *The Petersfield* and *The Judith Randolph*, pronounced "that both ships were in fault; that *The Judith Randolph* was most in fault; and decreed that the whole of the damage sustained by the owners of the ship *Petersfield* and her cargo, which was sunk and lost, as well as the 230*l.* damages (*z*)

Book, 11th March, 1702; Act Book, No. 189, fo. 407.

(*r*) *Marsingill* c. *Taylor*, Ass. Book, vol. 368; Act Book, fo. 523; *Kichener* c. *Cocklin*, Act Book, 191, fo. 4.

(*s*) *Noden* c. *Ashton*, Libels, File 128, No. 350; Ass. Book, 20th June, 1706. See Delegates' Ass. Book.

(*t*) *Gull* c. *Carswell*, Ass. Book, 26th May, 1709; Delegates' Ass. Book, 19th Dec. 1712.

(*u*) *Reed* c. *Wellford*, Ass. Book, 26th Jan. 1726.

(*x*) *Noble* c. *Wilson*, Ass. Book, 28th Nov. 1746.

(*y*) In the Ass. Book, *nom. Wildman* c. *Blakes*.

(*z*) From a note of Dr. Nicholl, who was counsel for *The Judith Randolph*, it appears that after the institution of the Admiralty suit an action had been brought at common law by *The Judith Randolph* owners against *The Petersfield* owners, and that a verdict for 65*l.* damages and

and expenses given against the ship *Petersfield*, and the costs of suit here on both sides, be borne equally by the parties in this suit." This appears to have been the first case in which the *rusticum judicium* was applied solely upon the ground that both ships were in fault, with an express finding that the fault of one ship was greater than the fault of the other.

The Friends Goodwill and The Peggy 1789.

The next case in order of date is *The Friends Goodwill* and *The Peggy* (*a*). This was a decision of the Delegates varying a decree of Sir J. Marriott (9th December, 1785), by which he had pronounced that *The Peggy*, the defendant ship, was alone in fault, and had condemned her owners in full damages and costs. The case was appealed, and on the 7th of July, 1789, the Delegates (*b*) "pronounced for the appeal . . . . reversed the decree of the said judge . . . . and did pronounce that the master and crew of each of the said ships *Friends Goodwill* and *Peggy* contained in the proceedings of this cause were equally blameable in their conduct as to the said two ships running foul of each other, and by which means the said ship *Friends Goodwill* and cargo were totally lost; that the loss or damage occasioned by the aforesaid accident, and all costs, charges, and expenses incurred or to be incurred on account thereof, ought to be borne, paid, and sustained by the said John Stoker and Robert Hutton, the owners of the said ships in equal moietys, and share and share alike, &c." (*c*).

It is evident from the various orders made in this case that the Delegates had very great difficulty in arriving at a decision. The two Trinity masters by whom they were assisted differed in opinion as to the merits, and by consent of the parties a third was called in.

The Resolution and The Langton (1789).

The third case of the year 1789 was *The Resolution* and *The Langton* (*d*). This is in one respect the most remarkable of the three cases, for in it Sir James Marriott decided, in terms apparently chosen in order to raise the question whether the *rusticum judicium* may be applied where the collision occurs without fault in either ship, that it did apply to such a case; and from his decision there was no appeal. The registrar's note of the interlocutory decree is as follows:—"Sir J. Marriott, judge,

165*l.* costs had been recovered. This is the sum of 230*l.* here mentioned: see Miscell. Bundles, Ser. III., No. 18. The papers in the case are Instance Papers, bdle. 76, where there is a copy of the record in the King's Bench. The record is King's Bench, East, 27 Geo. 3, rot. 1416.

(*a*) *Nom. Hutton* c. *Stoker.*

(*b*) Gould, J., Ashurst, J., Hotham, B., and Dr. Fisher were the judges.

(*c*) The parties had agreed that the Court should take the report of three Trinity masters upon the merits of the case.

(*d*) *Nom. Nelson* c. *Fawcett* in the Ass. Book.

pronounced that the loss of the ship and cargo of *The Resolution* was not occasioned by the default of the masters and crews of either of the ships in question, but was an inevitable accident, owing to the showring weather, the darkness of the night, the small distance of the two ships, and shortness of time in discovering each other, being close; and the judge decreed that the damages on the loss of the ship *Resolution* and her cargo, as well as the damage done to the ship *Langton*, together with the costs of suit on both sides, be equally borne by both parties; and assigned each party to bring in a schedule of their damages; which being brought in the judge referred the same to the registrar, taking to his assistance two merchants" (*e*).

The Three Relations and *The Britannia* (1788).

It should be added that in the year (1788) previous to that in which the three last-mentioned cases were decided occurred the case of *The Three Relations* and *The Britannia* (*f*). There Sir James Marriott pronounced that "under the circumstances of the case, each party should stand by his own damage and expenses." What the circumstances of that case were does not appear from the registrar's minute book, from which the decree is here cited. The decree is unusual in form; the common form, where (as here) fault is alleged and not proved, being to the effect that the plaintiff's libel not having been proved, the adverse party be dismissed from further observance of justice in the cause.

It is singular that during the long period (*g*) during which Lord Stowell presided over the Admiralty Court no case occurred in which he had occasion to apply the rule of division of loss. Two cases should, however, be here mentioned, both of great importance in the history of the subject. In *The Woodrop Sims* (*h*), decided by Lord Stowell (then Sir William Scott) in 1815, and in *The Lord Melville*, decided in 1816, occur the dicta of that learned judge with reference to the incidence of loss in case of collision, referred to on a former page (*i*), in which he divides collisions into four classes: (1) where the collision is caused by the fault of the defendant ship; (2) by the fault of the plaintiff ship; (3) by the fault of both ships; (4) without

(*e*) This decision is in accordance with the statement of the law in Brown's Admiralty Law, vol. 2, p. 206: "In case of accident the loss was divided between both parties in equal proportions."

(*f*) *Faye* c. *Graham*, 26th March, 1788.

(*g*) Thirty years, 1798—1828.

(*h*) This case should be cited as *The Woodrop*, the name of the ship. Sims, her master, according to the practice of the day, was probably sued personally. It is, however, so commonly known as *The Woodrop Sims*, that the name has been retained.

(*i*) *Supra*, p. 117.

fault in either ship. The rule of division of loss is declared to be applicable only in the third case, namely, where the collision is caused by the fault of both ships. Notwithstanding the conflicting decisions above cited and the various reasons given for them, there can be no doubt that at the present day the law is as stated by Lord Stowell. Whatever may have been the original reason for the *rusticum judicium*, the only reason applicable to it in its modern form is common fault. It remains only to mention two or three more cases to complete the history of the rule.

Hay v. *Le Neve*.

In 1824 *Hay* v. *Le Neve* was decided by the House of Lords. That was an appeal from a decision of a Scotch Court, which had apportioned in unequal shares (*k*) the loss suffered by a vessel, *The Wells*, which had been sunk at her anchor by *The Sprightly*. The House of Lords varied the decision of the Scotch Court, and, relying upon the dicta of Lord Stowell above mentioned, divided the loss in equal shares, and condemned the owners of *The Sprightly* in half the loss on *The Wells*. In that case both ships were clearly in fault: *The Wells* for having brought up in an improper place and for not showing a light, *The Sprightly* for negligent navigation and want of look-out. The question in dispute was, whether the division of loss should be in equal shares or be apportioned according to the degree of fault in either vessel. The decision was in accordance with Lord Stowell's dicta, and, it may be added, with an unbroken line of authorities for a period of at least 146 years, in favour of an equal division. But there was no decision that the rule of division of loss was confined, as stated by Lord Stowell, to the case of "both ships in fault." Nevertheless, since the decision in *The Resolution* and *The Langton* the rule has never been applied, except in the case of "both ships in fault"; and the dicta of Lord Stowell, having acquired additional weight by the citation in the House of Lords in *Hay* v *Le Neve*, have been taken, apparently without discussion, to settle the law. Thus in *The Catherine of Dover* (*l*) (1828), Sir Christopher Robinson, in addressing the Trinity masters, stated the law as follows:— "The result of the evidence will be one of three alternatives: either a conviction in your mind that the loss was occasioned by

(*k*) *The Sprightly* was condemned in two-thirds of the loss suffered by *The Wells*.

(*l*) 2 Hag. 145. Cf. also *The Maid of Auckland* (1848), 6 Not. of Cas. 240, where there were cross actions, and Dr. Lushington dismissed both for want of proof: *The Laconia*, 2 Moo. P. C. N. S. 161 (1863), where a similar order was made by the Privy Council: *The Marpesia* (1872), L. R. 4 P. C. 212.

accident, in which case it must be sustained by the party on whom it has fallen; or a state of reasonable doubt as to the preponderance of evidence, which will have nearly the same effect; or thirdly, a conviction that the party charged with being the cause of the accident is justly chargeable with the loss of this vessel according to the rules of navigation which ought to have guided them.

The Monarch (1838).

It remains only to mention the case of *The Monarch* and *The Success*, decided by Sir Christopher Robinson on the 23rd of June, 1838, as being the next in which the *rusticum judicium* was applied. There the judge pronounced "the collision in question in this cause to have been caused by the fault of the masters and crews of the said ship or vessel *Monarch* and the late smack *Success*, and for a moiety only of the damages proceeded for, and condemned [the owners of *The Monarch*] and the bail given on their behalf to answer the action in a moiety of such damage and of the costs incurred on behalf of [the owner of *The Success*] in this cause" (*m*). This decree was subsequently, on the 31st of January, 1839, rescinded by Dr. Lushington as regards costs; and by a new decree he pronounced the parties "to be liable to the costs incurred on their own behalf only" (*n*).

History of the rule since 1789.

This completes the history of the application of the rule, so far as the present writer has been able to trace it by an examination of the Admiralty records. Since the year 1838, the date of the decision in *The Monarch*, the number of collision cases has been very large, and the *rusticum judicium* has been frequently applied; but always, it may be safely assumed, in cases of "both ships in fault." In *The Oratava* and *The Janet*, 11th May, 1839, and *The London Merchant*, 20th May, 1840, it was so applied; and beyond this the examination of the records has not been carried. It may be assumed that if, since 1840, the rule had been applied in any case of "neither ship in fault," or "insufficient proof," such a case would have been reported; and no such case appears in the books. It may therefore be taken to be a fact that for fully a century (since 1789) the rule has only been applied in cases of "both ships in fault"; never in the case of "neither in fault," or in the case of "insufficient proof." Nay, further, in such cases the plaintiff's action has invariably been dismissed, and generally with costs. Several

(*m*) This is the case called *The Monarch*, and referred to in a note to *The Celt*, 3 Hag. 321.

(*n*) *The Monarch*, 1 W. Rob. 21.

instances of this will be found referred to in a former page (*o*). Yet neither has the decision of Sir James Marriott in *The Resolution* and *The Langton*, nor have any of the previous decisions between the years 1677 and 1789, in which the *rusticum judicium* was applied in cases of doubt and mere accident, been reversed, overruled, or, so far as the writer is aware, even referred to (*p*) or discussed. Not having been reported, they appear to have altogether escaped observation; so much so that in *Hay* v. *Le Neve* (1824) Lord Giffard states that the advocates (of whom Dr. Lushington was one) who appeared in that case, in answer to a question from the House, acknowledged that they were not aware of any case in which the *rusticum judicium* had ever been applied in England. A note of *The Petersfield* was supplied to the House by Lord Stowell, who was a member of the House, but does not appear to have heard the appeal. It is singular that that learned judge was not (it seems he was not) aware of the decisions in *The Resolution* and in *The Friends Goodwill*, both of which occurred in 1789, the year of the decision in *The Petersfield*, and of which one was in direct conflict with his dictu in *The Woodrop Sims* and *The Lord Melville*.

The view of the Legislature, as shown by sect. 25, sub-sect. 9, of the Judicature Act, clearly was that the rule applies only where both ships are in fault. It cannot be supposed that an Act passed manifestly with a view to make the law uniform in all the Courts would have left the rule of division of loss applicable in Admiralty in case of doubt and mere accident, whilst, for the sake of uniformity, it extended the rule where both ships are in fault to the Common Law Divisions of the High Court.

(*o*) See the cases cited above, p. 143, note (*l*). To these may be added the following decisions of Lord Stowell: *The Flora*, 28th June, 1815; *The Robert*, 9th June, 1818; *The Vrow Janetze*, 2nd Feb. 1820; *The Betsy Caines* (1827), 2 Hag. 28; *The Marpesia* (1872), L. R. 4 P. D. 212.

(*p*) In *Hay* v. *Le Neve*, a case in the reign of Queen Anne was referred to (*semble*, one of the cases decided between 1707 and 1718 cited above), but not with reference to the point here under discussion.

CHAPTER VII.

LIMITATION OF LIABILITY.

Limitation of liability is statutory.

In this country the limitation of shipowners' liability depends entirely upon statute. It is said by writers of authority that by the maritime law the shipowner's liability for collision is limited to the value of ship and freight (*a*); and this, it is believed, is the law in most or all foreign countries at the present day. Whether such a rule of the maritime law (*b*) ever existed, it is immaterial here to inquire. No such rule has ever been recognized by the Courts of this country, either at common law or in Admiralty (*c*). By the municipal laws

Maritime and foreign law upon the subject.

(*a*) 3 Kent's Comm. § 218; 4 Phillimore's International Law, 2nd ed. 628; Valin sur l'Ordonnance de la Marine, l. 2, tit. 8, Art. 2; Cours de Droit Comm. Mar. Boulay-Paty, vol. i. 263—298; Pardessus Droit Commercial, Part 4, tit. 2, ch. 3, s. 2; Emerigon Cont. à la Grosse, ch. 4, s. 11; and see *per* Bradley, J., in *The Jos. W. Dyer* v. *The National Steamship Co.*, 14 Blatchf. 483, 487; and *per* Ware, J., in *The Rebecca*, Ware's Rep. 188, 195, 198; *The Phebe*, Ware, 263. The Consolato del Mare, cc. 141, 182, provides that in certain cases the ship herself, and the managing owner, shall be liable to the merchant for the loss of his goods, but the other owners only to the extent of their shares. But it seems that for damage caused by their own fault, as where the ship's equipment is deficient, the part owners were liable to the full extent. See *ibid.* 194.

Upon contracts with reference to the ship entered into by his agent, it seems that the shipowner was liable only to the ship's value. See *ibid.* cc. 209, 244.

(*b*) As to whether a general maritime law binding upon the Courts of this country ever in fact existed, see *per* Willes, J., *Lloyd* v. *Guibert*, L. R. 1 Q. B. 115, 124; *per* Brett, L. J., *The Gaetano*, 7 P. D. 143; *The Leon*, 6 P. D. 148; *The Patria*, L. R. 3 A. & E. 436, 461, 462.

(*c*) See *The Dundee*, 1 Hag. Ad. 109, 120; *The Carl Johann*, referred to 3 Hag. Ad. 186; *The Aline*, 1 W. Rob. 111; *The Volant*, *ibid.* 383; *The Mellona*, 3 W. Rob. 16, 20; *The Wild Ranger*, Lush. 553, 564; *Wilson* v. *Dickson*, 2 B. & Ald. 2; *Gale* v. *Laurie*, 5 B. & C. 156, 164; *Cope* v. *Doherty*, 4 K. & J. 367, 378; *Stoomvaart Maatschappy Nederlands* v. *Peninsular and Oriental Steam Navigation Co.*, 7 App. Cas. 795, 814. The *dictum* of Parke, B., in *Brown* v. *Wilkinson*, 15 M. & W. 398, appears to be incorrect. In *Vognet* v. *Tomlinson*, decided by the Delegates in 1738 (the collision occurred in 1733), the sentence was for full damages, a sum which must have largely exceeded the value of the wrong-doing ship and her freight. The loss on the plaintiff's ship, *The Eleanor*, is stated in the pleadings to have been 2,000*l.*, and the value of the defendant's ship, *The Wilhelmina*, and her freight 680*l.* (600*l.*+80*l.*). The case is interesting also upon another point. It shows that cargo on board the

of Holland, France, and other continental nations, the liability of shipowners, not only for the torts but also for the contracts of the master of their ship, has for more than two centuries been limited to the value of the ship and freight (*d*). It is perhaps due to this fact that limited liability has been said to be a principle of the general maritime law. But its origin cannot be traced either to the Roman law or to any of the mediæval codes of maritime law. In both these systems it is either implied or expressly stated that the wrong-doer in a collision shall make full compensation (*e*).

It originated perhaps in

The contract of *commande*, or joint adventure of shipowners and merchants, corresponding in some respects to the *société en commandite*, or partnership with limited liability, of modern times, is perhaps the origin of the widespread doctrine of limited liability of shipowners. This kind of association extensively prevailed in the Mediterranean in the Middle Ages, and is frequently mentioned in the Consolato del Mare. As regards third parties, it seems that the liability of the shipowner upon contracts entered into by his agent, or com-

wrong-doing ship, as well as the ship herself, was formerly liable for the loss. *The Wilhelmina* had a cargo on board worth from 15,000*l.* to 20,000*l.*, and this was arrested and not released until its owners had given bail in 4,000*l.*, notwithstanding their contention that cargo-owners were not liable for the damage. See Marsden Ad. Cas. 314; Ad. Ct. Records, Miscell. Bundles, Ser. IV. bdle. 20; *ibid.* Delegates' Processes, vol. 489, No. 1048.

(*d*) Emerigon, Contr. à la Grosse, ch. 4, s. 11; Boulay-Paty Cours de Droit Commercial Maritime, vol. i., pp. 263—298. See also *The Mary Ann*, L. R. 1 A. & E. 8, 11.

(*e*) As to liability for collision by the Roman Law, see Dig. lib. 4, tit. 9; Dig. lib. 44, tit. 7, fr. 5; Dig. lib. 45, tit. 5, fr. 1. As to the mediæval codes, the Laws of Oleron, Art. 15 assumes that the wrong-doer shall pay full damages—*tous ses dommages — tot ses danmatges*. See Black Book, Rolls Ser. i. 108; *ibid.* vol. ii., pp. 229, 419. So the Consolato del Mare, cap. 155: "E si dan li fa, deulo li tot esmenar e restitnar," but if the collision is accidental, "no li sia tengut de esmenar tot lo dan . . . per ceo car no es sa culpa"; and see *ibid.* cap. 158, to the like effect. So the Wisby Sea Laws, Art. 29: De schipper is schuldich myt synen schjpluden to delende den schaden mank sik; and the Hamburgh Code, Art. 23, *he schal eme gans den schaden beteren;* Black Book, iv. 373; and the Gotland Code, Art. 65, *so schal hre eme den schaden al hel gelden.* And by the Flanders Sea Laws, Art. 15, the master who lays out his anchor so as to damage another ship, *si siin datwel sculdich te beterem;* and Art. 31 of the Gotland Code to the same effect; Black Book, iv. 88. So the rule as to dividing the loss assumes that, but for it, the ship run down would recover *alle du schade* (Flanders Code), *alle den schaden* (Gotland Code), Art. 30, *schaden* (Gotland Code, Art. 30, Black Book, iv. 88). In the Instructions to the Admiral in the Black Book of the Admiralty, dating circ. 1337—1351 (Black Book, i. 37), the wrong-doer in a collision is to make *plaine amende*.

mittee in such an association, with reference to the ship, was limited to the value of the ship (*f*).

Protection is at the root of it. So avowed by Grotius.

It is not until the beginning of the seventeenth century that we find protectionist doctrines put forward upon grounds of public policy as a reason for limiting shipowners' liability. Grotius, writing in the year 1625, says that the principle of limitation of owners' liability upon the contracts of the master prevailed in his day, and for a long time previously had prevailed in Holland (*g*). And he approves the principle as being consonant with natural justice, and necessary for the encouragement of shipping (*h*). Liability for collision is not expressly noticed, but the principle which limited liability in the case of his contracts, probably applied equally to protect owners from unlimited liability for their master's torts. The rule of continental law which limits the shipowner's liability upon his master's contracts has never been adopted in England; the liability of a shipowner upon contracts entered into by the master as his agent having always been, as it is at the present day, unlimited.

Analogy of noxal action —*noxæ deditio*.

More than one writer (*i*) has pointed out the analogy between the law, which limits shipowners' liability to the value of ship, and the noxal action—*noxæ deditio*—of the Roman law. The law of deodand has also been thought to be founded on the same idea, which seems to personify the inanimate object with which the injury is done and to identify it with the actual wrong-doer. In the face of the express provisions of the Code of Oleron and other sources of English maritime law, which require the wrong-doer to make full compensation to the sufferer in a collision, there is difficulty in accepting this view as to the origin of limited liability.

Connection between

The rule of unlimited liability, which seems to have been

(*f*) Cf. Consolato del Mare, cc. 209, 244.

(*g*) De Jure Belli et Pacis, l. 2, ch. 11, s. 18: "Apud Hollandos ubi mercatura pridem maxime viguit . . . . et nunc et olim constitutum ne exercitoriâ etiam universi (exercitores) amplius teneantur quam ad æstimationem navis, et eorum quæ in navi sunt."

(*h*) "Absterrentur enim homines ab exercendis navibus si metuant ne ex facto magistri quasi in infinitum teneantur": *ibid.*

(*i*) See Bynkershoek, Quæst. Jur. Priv. l. 4, c. 20; Holmes on the Common Law, p. 30.

adopted from the civil law into the mediæval codes, was in the case of inevitable accident to some extent modified by the rule of division of loss. And in some of the later codes there are traces of the rule of division of loss being extended to cases of collision by negligence (*k*); but the limitation of liability to the value of ship and freight belongs to a later date.

Limitation of liability and division of loss.

In the case of damage done by a ship belonging to foreigners resident abroad, and where service of a writ of summons cannot be effected, the damages recoverable are, in practice, limited to the value of the ship and freight, the *res* arrested by the Admiralty Court. The statutory limit of liability is doubtless connected with this fact; but the arrest of the ship was adopted, in the first instance, in order to compel her owners to appear, and not because their liability was limited to the value of the ship (*l*).

Connection between limited liability and arrest of the ship.

The history of the singular legislation in this country which prevents the sufferer in a collision between ships from recovering damages beyond a sum fixed by reference to the size of the instrument with which the damage is done, is as follows: Until the year 1734, by the common law of England and by the maritime law as administered in the Admiralty Court of this country, the liability of shipowners for damages by collision was, as has been stated above (*m*), unlimited. In that year an Act (7 Geo. 2, c. 15) was passed limiting shipowners' liability for loss of cargo by theft of master or crew to the value of the ship and freight (*n*). This Act was passed in consequence of the decision in *Boucher* v. *Lawson* (*o*), by which the shipowners

History of English legislation upon the subject.

7 Geo. 2, c. 15.

(*k*) See Droit Maritime de la Suède, 3 Pardess. 129, 173, 174; Dantzic Sea Laws, Art. 51, Black Book, iv. 349.

(*l*) Though, as pointed out by Sir J. Jervis, in *The Bold Buccleuch*, 7 Moo. P. C. 267, 282, arrest of the ship in Admiralty is not exactly analogous to the process of foreign attachment. See also *supra*, p. 71. The *dictum* of Parke, B., to the contrary in *Brown* v. *Wilkinson*, 15 M. & W. 391, is probably incorrect. Dr. Browne (Civ. Law, ii. 397) thought that in an action *in rem* for collision, there is no pretence for making the owner answerable, or demanding reparation as against him beyond the value of the ship; though, as he points out, Bynkershoek thought that, as against the master, there is a remedy *in solidum*.

(*m*) See *supra*, p. 146, n. (*a*).

(*n*) *Sutton* v. *Mitchell*, 1 T. R. 18, is a decision under this Act, that the owners were not liable beyond the statutory limit for a robbery of cargo in which one of the crew was concerned.

(*o*) Cas. temp. Hardw. 85. See *per* Buller, J., *Yates* v. *Hall*, 1 T. R.

were held liable for loss of a cargo of bullion taken on board in Portugal and afterwards stolen by the master. The fact that Holland and other maritime nations of Europe had previously passed similar laws, for the protection and encouragement of their shipping, appears to have influenced the Legislature in passing the measure (*p*). By 26 Geo. 3, c. 86, the relief afforded by the previous Act was extended to cases of theft by persons other than the crew, and to cases of loss by fire (*q*). Limitation of liabilty in case of collision was first created by 53 Geo. 3, c. 159. This Act, after reciting that it was expedient to encourage the owning of British ships (*r*), fixed the limit of shipowners' liability for damage to other ships and to cargo on board either of two ships in collision at the value of the ship sued and the freight she was earning or under contract to earn. The Act was confined to sea-going British ships, and under it questions arose as to the amount of the shipowners' liability when freight had been paid before the collision (*s*), or never

26 Geo. 3, c. 86.

53 Geo. 3, c. 159.

75, 78. *Boucher* v. *Lawson* is clearly the case referred to in the petition of shipowners set out in the Journals of the House of Commons, Sess. 1733, p. 277. The petitioners, after referring to the decision, complain that they, "when they became owners of ships, did not apprehend themselves exposed to such hazard, or liable as owners to any greater loss than that of the ships and freight; and of the insupportable and unreasonable hardships to which our laws in this case subject them; and to which no owners of ships are exposed in other trading nations"; and they represent to the House "that, unless some provision be made for their relief, trade and navigation will be greatly discouraged, since owners of ships find themselves, without any fault on their part, exposed to ruin, &c., &c., &c." A very similar petition, asking for an alteration in the law by which shipowners were made liable for damage done by their ships, when they (the owners) were not on board, was presented to Parliament in the fifteenth or early sixteenth century. It was not successful. "Le Roy sadvisera" was the answer. See Ancient Petitions, 6264.

(*p*) See *per* Lord Stowell, *The Dundee*, 1 Hag. Ad. 109, 121, *per* Abbott, J., *Gale* v. *Laurie*, 5 B. & C. 156, 163; *per* Lord Blackburn, 7 App. Cas. 812; and see *supra*, p. 147. The Commons Journals for the year 1733 contain several petitions from shipowners for relief in other matters. Another Act of the same year—53 Geo. 3, c. 87—was passed for their relief.

(*q*) *Hunter* v. *M'Gown*, 1 Bligh, 573, was a decision that this Act did not apply to inland craft, such as a Clyde gabbert.

(*r*) There does not appear to have been any considerable discussion in Parliament upon the principle of either this or the subsequent Acts limiting shipowners' liability. See Commons Journals, vol. 68, p. 670; 133 Hansard's Parl. Deb. pp. 574 *seq.* Upon the Act of 1862 there was some discussion of details, but little was said as to the principle or policy of the Act: Hansard, vol. 165, p. 1932; vol. 166, pp. 2217 *seq.*; vol. 167, pp. 735, 750; vol. 168, pp. 1 *seq.*

(*s*) *Wilson* v. *Dickson*, 2 B. & Ald. 2.

earned (*t*), as to the time at which the ship's value was to be taken for the purpose of the Act (*u*), and as to the ship's appurtenances which were to be included in the valuation (*x*). The preamble shows that limitation of liability was founded upon considerations of policy and not of justice. "The principle of limited liability is that full indemnity, the natural right of justice, shall be abridged for political reasons" (*y*). As to the justice of the Acts limiting liability, opinions have differed widely (*z*); and it is possible that the construction of the Acts has not been unaffected by these opinions (*a*); but there is no reason why they should be construed otherwise than according to the fair and natural meaning of their words (*b*).

By 17 & 18 Vict. c. 104, ss. 504, 505, the same limit was fixed for damages recoverable for loss of life or personal injury, with a provision that in such cases the value of the ship should be taken at not less than 15*l.* per ton (*c*); and the statutory limitation was extended to foreign as well as British ships. Under all these Acts the value of the ship and freight at or immediately before the collision had to be ascertained, a fruitful source of litigation and expense. 17 & 18 Vict. c. 104, ss. 504, 505.

To obviate this (*d*), and also in order that bad and inferior ships should not have an advantage, in case of collision, over good and valuable ships (*e*), 25 & 26 Vict. c. 63 was passed. 25 & 26 Vict. c. 63, s. 54.

(*t*) *Cannan* v. *Meaburn*, 1 Bing. 465.

(*u*) *Brown* v. *Wilkinson*, 15 M. & W. 391.

(*x*) *The Dundee*, 1 Hag. Ad. 120; *Gale* v. *Laurie*, 5 B. & C. 156; *The Triune*, 3 Hag. Ad. 114, *in ra*, p. 158, were decisions under this Act.

(*y*) *Per* Dr. Lushington, *The Amalia*, 1 Moo. P. C. N. S. 471, 473.

(*z*) "An Act sufficiently tyrannical as it is": *per* Brett, L. J. *The Ettrick*, 6 P. D. 127, 136. Similar opinions are expressed in *The Northumbria*, L. R. 3 A. & E. 6, 13; *Chapman* v. *Royal Netherlands Steamship Co.*, 4 P. D. 157, 184; *The Andalusian*, 3 P. D. 182, 190; and *per* Dr. Lushington, *supra*. A different view was taken by Butt, J., in *The Warkworth*, 9 P. D. 20, 21. And see *per* Mellish, L. J., in *London & S. W. Rail. Co.* v. *James*, L. R. 8 Ch. 241, 252.

(*a*) See *per* Abbott, C. J., *Gale* v. *Laurie*, 5 B. & C. 156, 163; *per* Brett, L. J., 4 P. D. 184; 6 P. D. 136; *per* Dr. Lushington, *The Benares*, 14 Jur. 581.

(*b*) See *per* Butt, J., *The Warkworth*, 9 P. D. 20.

(*c*) *Nixon* v. *Roberts*, 1 J. & H. 739; *Leycester* v. *Logan*, 4 K. & J. 725; *Dobree* v. *Schroder*, 6 Sim. 291; 2 M. & Cr. 489; *Grainger* v. *Martin*, 2 B. & S. 456; *African Steamship Co.* v. *Swanzy*, 2 K. & J. 660, are decisions under this Act.

(*d*) See *per* Lord Blackburn, 7 App. Cas. 811, 815.

(*e*) Hansard, Parl. Debates, vol. 165, p. 1932, Mr. Milner Gibson's speech on introducing the Bill: Lindsay's History of Merchant Shipping, vol. 3, p. 408.

That Act (sect. 54) struck a rough average value for all ships at 15*l.* or 8*l.* per ton, the valuation to be at the higher or lower rate according as the collision was accompanied by loss of life or personal injury or not. In 1894 it was repealed, but in substance re-enacted, by 57 & 58 Vict. c. 60, s. 503, as follows:—

57 & 58 Vict c. 60, s. 503

(1.) The owner of a ship, British or foreign, shall not, where all or any of the following events take place without their actual fault or privity; (that is to say),

(a) Where any loss of life or personal injury is caused to any person being carried in the ship;

(b) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board the ship;

(c) Where any loss of life or personal injury is caused to any person carried in any other vessel by reason of the improper navigation of the ship;

(d) Where any loss or damage is caused to any other vessel or other things whatsoever on board any other vessel, by reason of the improper navigation of the ship;

be liable in damages beyond the following amounts; (that is to say),

(i.) In respect of loss of life or personal injury, either alone or together with loss of or damage to vessels, goods, merchandise, or other things, an aggregate amount not exceeding fifteen pounds for each ton of their ship's tonnage; and

(ii.) In respect of loss of, or damage to, vessels, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not, an aggregate amount not exceeding eight pounds for each ton of their ship's tonnage.

(2.) For the purposes of this section,—

(a) The tonnage of a steamship shall be her gross tonnage without deduction of engine room; and the tonnage of a sailing ship shall be her register tonnage: Provided that there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use, which is certified under the regulations scheduled to this Act with regard thereto;

(b) Where a foreign ship has been or can be measured according to British law, her tonnage, as ascertained by that measurement, shall, for the purposes of this section, be deemed to be her tonnage ; 57 & 58 Vict. c. 60, s. 503.

(c) Where a foreign ship has not been and cannot be measured according to British law, the surveyor-general of ships in the United Kingdom, or the chief measuring officer of any British possession abroad, shall, on receiving from or by the direction of the Court hearing the case, in which the tonnage of the ship is in question, such evidence concerning the dimensions of the ship as it may be practicable to furnish, give a certificate under his hand stating what would in his opinion have been the tonnage of the ship, if she had been duly measured according to British law ; and the tonnage so stated in that certificate shall, for the purposes of this section, be deemed to be the tonnage of the ship.

(3.) The owner of every sea-going ship or share therein shall be liable in respect of every such loss of life, personal injury, loss of or damage to vessels, goods, merchandise, or things as aforesaid arising upon distinct occasions to the same extent as if no other loss, injury, or damage had arisen.

Damage by unregistered ship.

The operation of this enactment is extended to owners, builders, or other persons interested in a ship built in any part of the King's dominions, and not registered, but does not extend to the owners of a ship after it has become a foreign ship (*f*).

Damage to or by dock, &c. authorities.

By 63 & 64 Vict. c. 32, s. 1, it is further extended "to all cases where (without their actual fault and privity) any loss or damage is caused to property or rights of any kind, whether on land or water, or whether fixed or moveable, by reason of improper navigation or management of the ship." And by sect. 2 of the same Act the liability of dock, canal, harbour, and conservancy authorities is limited in a novel manner by reference to the tonnage of the largest ship that has, within five years of the damage, used the dock or waters over which the authority has jurisdiction.

(*f*) 61 & 62 Vict. c. 14, s. 1, and 6 Ed. 7, c. 48, s. 68.

Tonnage measurement.

The enactments relating to tonnage measurement are 57 & 58 Vict. c. 60, ss. 77—87, and 6 Edw. 7, c. 48, ss. 54 and 55. In order to understand the cases decided upon the corresponding sections of former Acts, it will be convenient to summarize these sections. Section 77 gives the rule for measuring a ship's "tonnage" for the purpose of ascertaining her "register tonnage." Section 78 provides for the deduction, in the case of steamships, of the space occupied by the machinery from her "gross tonnage," in order to ascertain her "register tonnage." Section 79; sect. 54, M. S. A., 1906, provide for the deduction, in all ships, of (1) spaces used for the accommodation of master or crew; (2) spaces used for the working of capstan, helm, or anchor, for the keeping of charts, signals, and other instruments of navigation, or boatswain's stores (hereinafter called navigation spaces); (3) spaces occupied by the donkey engine and boiler in certain cases, and any space (other than a double bottom) adapted only for water ballast; and, in case of a sailing ship, spaces used for storing of sails. None of these spaces can be deducted, unless certain provisions as to certificates have been complied with. Section 80 makes special provision for screw steamships measured before 26th August, 1889. Section 81 provides for ships having a double bottom; the words (taken from 52 & 53 Vict. c. 43, s. 5) that the ship's depth "shall be taken to be the upper side of the inner plating of the double bottom, and that upper side shall, for the purposes of measurement, be deemed to represent the floor timber" mentioned in the rules for measuring which are scheduled to the Act, have been the subject of decisions (*g*). Section 82 provides that the tonnage measured in accordance with the Act and entered on the register shall be the "tonnage" of the ship, until re-measurement. Section 83 is as to fees. Section 84 provides that, upon an Order in Council being made in that behalf, the ships of any foreign country shall, for the purposes of the Act, be taken to be of the tonnage specified in their certificates of registry; with power for his Majesty to revoke such Orders and to order re-measurement of foreign ships in

(*g*) *The Cordilleras*, (1904) P. 90; 9 Asp. 506; *The Zanzibar*, (1892) P. 233.

certain cases. The above certificate of registry, together with an affidavit showing that certain water ballast spaces in a French vessel were not available for cargo, was held to be sufficient evidence of the propriety of deducting the space occupied by these tanks without a certificate of a surveyor under sect. 81 (*g*). And now by M. S. Act, 1906, s. 55, any space shown by the certificate of registry or other national papers as deducted from tonnage shall be deemed to have been certified under the principal Act. Orders in Council of the following dates were made under former Acts with respect to the ships of the countries named; and under sect. 745 of the Merchant Shipping Act, 1894, these Orders are still in force: —

America, United States, 30th July, 1868, 3rd October, 1895; Austria, 19th August, 1871; Belgium, 17th October, 1884; Denmark, 29th February, 1868, 30th December, 1878, and 21st November, 1895; France, 5th May, 1873; Germany, 23rd July, 1889, and 22nd February, 1896; Greece, 14th August, 1879; Hayti, 3rd May, 1882; Italy, 30th September, 1873; Japan, 27th January, 1885; Netherlands, 3rd May, 1888; Norway, 17th May, 1876, and 2nd February, 1884; Russia, 20th November, 1880; Spain, 17th March, 1875, and 5th August, 1875; Sweden, 17th March, 1875, 3rd May, 1882, and 18th August, 1882.

Section 85 provides that dues payable on a ship's tonnage shall be paid in respect of space occupied by deck cargo; but it does not appear that the owner's liability for collision is increased by carrying deck cargo. Sections 86, 87 are mainly administrative.

By 57 & 58 Vict. c. 60, s. 509, the provisions as to limitation of liability are applied to the whole of his Majesty's dominions. In some of these, however, laws have been passed which are not wholly in accordance with the Imperial Act (*h*).

The Act applies to all H. M.'s dominions.

The Act applies in all cases of collision, whether the ships are both British, or both foreign, or one British and one

It applies to all ships in all waters.

(*g*) See note (*g*) on opposite page.

(*h*) In St. Lucia the limit is 15*l.* per ton: Civ. Code, 2270. As to the Canadian Act, 43 Vict. c. 29, see *Georgian Bay Transportation Co.* v. *Fisher*, Tupper's Rep. Ontario, 383.

foreign (*i*); whether the action is in Admiralty or at law (*k*).

Decisions upon the Acts.

There have been several decisions upon the Acts limiting liability. The most recent cases, relating to tonnage measurement, may be taken first :—

The ship's register is not conclusive as to tonnage. If the tonnage is in fact different from that shown by the register, the liability is measured by the actual and not by the tonnage on the register (*l*).

The wording of the Acts (*m*), which have been superseded by the Merchant Shipping Act, 1894, was confused, and that of the present Act is not altogether clear, as to the measure of liability. "Tonnage," "gross tonnage," "register tonnage," "registered tonnage," and "burden" are not used in the same sense throughout the Acts.

The principal difficulty has been as to the spaces allowed to be deducted. Under the Acts in force in 1878 it was decided (*n*) that crew spaces on the upper deck could not be deducted under 17 & 18 Vict. c. 104, s. 21 (4); and further, that the requirements of 30 & 31 Vict. c. 124, s. 9, as to certificates must, even where the ship is foreign, be complied with, before any deduction can be made in respect of crew spaces not on the upper deck. By the next case, *The Palermo* (*o*), decided under the same Acts, in 1884, it was held that the provisions as to certificates need not be complied with in the case of crew spaces on the upper deck, which could be deducted under 17 & 18 Vict. c. 104, s. 21, sub-s. 4, notwithstanding 30 & 31 Vict. c. 124, s. 9. *The Umbilo* (*p*) turned on 17 & 18 Vict. c. 104, s. 54, and 52 & 53 Vict. c. 43, s. 3. It was held that a steamship could not deduct the "navigation" spaces mentioned in the later Act. In

(*i*) *The Amalia*, 1 Moo. P. C. N. S. 471; Br. & Lush. 151; including yachts (unless excluded by contract), *The Satanita*, (1897) App. Cas. 59.

(*k*) *Chartered Mercantile Bank of India, &c.* v. *Netherland Steam Navigation Co.*, 10 Q. B. D. 521.

(*l*) *The John McIntyre*, 6 P. D. 200. And see *The Dione*, 5 Asp. M. C. 347; *The Franconia*, 3 P. D. 164; *The Rexepta*, 14 P. D. 131.

(*m*) 17 & 18 Vict. c. 104, ss. 20—29; 30 & 31 Vict. c. 124, s. 9; 34 & 35 Vict. c. 110, s. 12; 52 & 53 Vict. c. 43.

(*n*) *The Franconia*, 3 P. D. 164, where *Burrell* v. *Simpson*, 4 Ct. of Sess. Cas. 4th ser. 177, was not followed; *The Cathay*, 9 Asp. M. C. 100.

(*o*) 10 P. D. 21.

(*p*) (1891) P. 118.

The Petrel (*q*), it was held that notwithstanding the use of the words "register tonnage" in 30 & 31 Vict. c. 124, s. 9, sub-s. 4, and notwithstanding the repeal of 17 & 18 Vict. c. 104, s. 21, sub-s. 4, by 52 & 53 Vict. c. 43, s. 1, sub-s. 2, certificated crew spaces could be deducted. Those words, it was said, referred to "total gross tonnage as registered, and not to the register tonnage mentioned in the Act of 1854." Lastly, in *The Pilgrim* (*r*), it was held that in a sailing ship, notwithstanding the decision in *The Umbilo*, "navigation" spaces could be deducted.

The above cases, all decided upon Acts now repealed, are probably all superseded by the present Act, except *The Umbilo*, which seems still to be an authority for holding that, in a steamship, "navigation" spaces cannot be deducted. The language of the Act of 1894 being far from clear, it has been thought better to mention all the cases used in construing the repealed Acts.

The Brunel (*s*), whose tonnage liability was in question, was a tug whose gross tonnage was 35·99 tons, engine-room space 31 tons, and crew spaces (uncertified) 6 tons. It was held that she was under 15 tons "burden" within the meaning of 57 & 58 Vict. c. 60, s. 3, and that although unregistered, her owner's liability was limited to 35·99*l.* × 8, *i.e.*, 287*l.* 18*s.* 4*d.*

Beneficial owners, as well as registered owners, are entitled to the benefit of limited liability (*t*). So also is a charterer to whom the ship is "demised" (*u*), that is to say, the ship is let by the owner and hired by the charterer so as to be under the control of the latter (*v*). Beneficial owners entitled to limit liability.

By 57 & 58 Vict. c. 60, s. 502, the liability of the owner is not limited where he is the actual wrong-doer; the Act applies only where the collision occurs without the "actual fault or privity" of the owner. The meaning of these words was discussed in *The Warkworth* (*x*), the facts of which case "Without their (the owners') actual fault or privity."

(*q*) (1893) P. 320.
(*r*) (1895) P. 117.
(*s*) (1900) P. 24.
(*t*) *The Spirit of the Ocean*, Br. & L. 336; *The Brinio*, *infra*. p. 159. In *Hughes* v. *Sutherland*, 7 Q. B. D. 160, a person who had contracted to buy a ship was held to be owner within 17 & 18 Vict. c. 104, s. 147.
(*u*) 6 Ed. 7, c. 48, s. 71; and see *Sir John Jackson, Ltd.* v. *Owners of S.S. Blanche*, (1908) A. C. 126.
(*v*) *Baumwoll* v. *Furness*, (1893) A. C. 8.
(*x*) 9 P. D. 145.

are stated later (p. 161). The effect of the words is to protect the shipowner, not only against the legal consequences of negligence in his servants or agents, but also from any imperfections in the ship which cause collision. An owner navigating his ship with his own hand, or, it seems, under his own orders as master, would not be entitled to the benefit of the Act.

Master part-owner.

If it is intended to make a master who is also part-owner liable beyond the statutory limit, as for a collision caused by his actual fault or privity, he must be sued as master in the first instance (*y*). It is not clear what constitutes fault or privity depriving an owner of the benefit of the statute. Where the master, who was also part-owner, was on board, but not on deck, at the time of the collision, and the ship was properly in charge of the mate and pilot, it was held that there was no fault or privity on the part of the master (*z*).

Co-owners: one actually in fault.

The fact of the master of the wrong-doing ship being a part-owner and personally in fault for the collision will not deprive his co-owners of the benefit of the statute (*a*); but he is himself liable for full damages (*b*). Where the master is a part-owner, it is not necessary for the co-owners, in order to obtain judgment limiting their liability, to prove that the master was not privy to the collision. They are entitled to the usual declaration limiting their liability, with a reservation of the injured person's rights against the master (*c*).

What ships are entitled to the benefit of the Act.

Ship must be registered.

Under 17 & 18 Vict. c. 104, and the previous Act, 53 Geo. 3, c. 159, sea-going ships only were entitled to the benefit of limited liability. The Act of 1862 (25 & 26 Vict. c. 63) applied to "any" ship; it seems that any foreign ship and any British ship (*d*), sea-going or otherwise, is entitled to the benefit of the Act now in force; but a British ship that has to be registered will not, after three months from her

(*y*) *The Volant*, 1 W. Rob. 383.

(*z*) *The Obey*, L. R. 1 A. & E. 102. See *Kidson* v. *McArthur*, 5 Ct. of Sess. Cas. 4th ser. 936.

(*a*) *The Spirit of the Ocean*, Br. & L. 336; *The Obey*, *supra*; *Kidson* v. *McArthur*, *supra*; *The Empusa*, 5 P. D. 6; *Wilson* v. *Dickson*, 2 B. & Ald. 2, was a similar decision under 53 Geo. 3, c. 159, s. 1.

(*b*) 17 & 18 Vict. c. 104, s. 516. *The Triune*, 3 Hag. Ad. 114, is a decision upon the similar exception in 53 Geo. 3, c. 159.

(*c*) *The Cricket*, 5 Asp. M. C. 53.

(*d*) As to the meaning of "ship" in the Merchant Shipping Acts, see p. 303, *infra*.

launch (*supra*, p. 151), be entitled to the benefit of the Act unless she is registered. Craft under fifteen tons employed solely upon the coasts or in rivers of the United Kingdom or some British possession within which the managing owners are resident, and certain fishing and coasting craft on the Newfoundland and neighbouring coasts, need not be registered (*e*).

Where, before the passing of 61 & 62 Vict. c. 14 (*supra*, p. 153), an unregistered ship was negligently launched from a builder's slip on the Mersey and damaged a vessel afloat, it was held that the liability of her owners (who were British) was not limited by the Act, and they were liable for the whole loss (*f*). But a ship bought by British subjects from Dutch owners (*g*), and not yet registered as British, was allowed to limit her liability in respect of the collision, which occurred when she still belonged to Dutch vendors (*h*).

Goods transhipped after collision and lost.

There is no limitation in respect of goods transhipped after and in consequence of a collision caused by the fault of the carrying ship, and subsequently lost by the negligence of those on board the ship to which they were transhipped. *The Bernina*, by her own fault, was in collision with *The Bushire*. Without the assent or knowledge of the cargo-owner, and in order to carry the cargo to its destination, the master of *The Bernina* transhipped his cargo from *The Bernina*, which had been injured in the collision, to *The Brixham* and *Avebury*. These two ships subsequently went ashor , and were lost with their cargoes by the negligence of those on board. After t eir loss, *The Bernina* owners instituted an a tion to limit their liability, and obtained the usual judgment. The cargo-owners made no claim in the limitation action, but instituted an action against *The Bernina* owners for loss of the cargo. It was held that they were not prevented from recove ing damages in this action by the judgment in the limitation action (*i*).

(*e*) 57 & 58 Vict. c. 60, s. 3; *The Brandt*, (1900) P. 24. See, as to fishing craft, s. 373.

(*f*) *The Andalusian*, 3 P. D. 182. Cf. *British Columbia Towing and Transport Co.* v. *Sewell*, 9 Duval's Rep. (Canada) 527.

(*g*) *The Brinio*, Ad. Div., Jan. 27th, 1891.

(*h*) Reported 90 L. T. Journal, 249.

(*i*) *The Bernina*, 12 P. D. 36. The bills of lading of *The Brixham* and *The Avebury* excepted negligence of the master and crew, while those of *The Bernina* did not. It wa held

Liability limited in contract as well as tort.

The liability of shipowners is limited in respect of damages recoverable in an action upon the contract to carry as well as in respect of a mere tort. So carriers by sea, or partly by sea and partly by land, may limit their liability as against passengers or cargo-owners (*k*).

Liability where two or more collisions.

The owners of every sea-going vessel (*l*) are liable for losses occurring upon separate occasions to the extent of their statutory liability in each case. The rest of sect. 503 applies to all foreign and registered British ships, whether sea-going or not; but sub-sect. 3 follows the Act of 1854 in confining the operation of the clause in question to sea-going vessels. Where a steamship struck a tug and also the ship to which the tug was passing her tow-line, it was held that the amount for which the steamship was liable was to be calculated as upon one collision and not upon two (*m*). The question is, whether the two collisions are the result of the same act of negligence; if they are, sect. 503 (3) applies, but not otherwise. If the wrong manœuvre which caused the first collision might have been corrected before it caused the second collision, it is held that the two collisions are not caused by the same act of negligence, and that the owner of the wrong-doing ship is liable in respect of two, and not only one collision. Thus *The Schwan*, by wrongly starboarding across the bows of *The Albano*, caused a collision between *The Albano* and *The Maggie*. Very shortly afterwards, but not so soon but that the helm might have been altered so as to avoid a second collision, *The Albano* struck *The Delano*. It was held, under 17 & 18 Vict. c. 104, s. 506, that *The Albano* was liable for both collisions (*n*).

Damage by tug or tow: measure of liability.

Where a steamship salvor was towing another, and both ran into and damaged a third ship owing to the negligence

this was immaterial. *Morewood* v. *Pollok*, 1 E. & B. 743, is a similar decision upon 26 Geo. 3, c. 86, s. 2.

(*k*) *London & S. W. Rail. Co.* v. *James*, L. R. 8 Ch. 241; *The Normandy*, L. R. 3 A. & E. 152.

(*l*) 57 & 58 Vict. c. 60, s. 503 (3), reproducing 17 & 18 Vict. c. 104, s. 506.

(*m*) *The Rajah*, L. R. 3 A. & E. 539. Cf. *The Bernina*, 12 P. D. 36; *The Douglas*, 7 P. D. 151. In *The Creadon*, 5 Asp. M. C. 585, Butt, J., stated the question to be whether the first collision caused the second. In 63 & 64 Vict. c. 32 (*supra*, p. 153), there is (s. 3) special provision for several losses occurring on one occasion.

(*n*) *The Schwan*, *The Albano*, (1892) P. 419.

of the towing ship, it was held that the towing ship was alone liable. The owners of the towing and the towed ship being the same, it was held that their liability was to the extent of 8*l.* per ton upon the tonnage of the towing ship (*o*). But where, in a case of ordinary towage, the collision was between tug and third ship, and all three were held in fault, it was held that the total liability of tug-owners and tow-owners was measured by the tonnage, not of the tug, but of the tow (*p*).

Owners not discharged by sinking of their ship.

If the wrong-doing ship is sunk in the collision, or subsequently to it, the owners are not thereby discharged from liability (*q*).

Combined effect of 25 & 26 Vict. c. 63, s. 54, and Lord Campbell's Act.

Lord Campbell's Act (*r*), enabling the representatives of persons killed by negligence to recover damages, is not repealed or affected by the Merchant Shipping Acts, except so far as those Acts limit the extent (*s*) of the shipowner's liability.

"Improper navigation."

It will be observed that the shipowner's liability in respect of injury to persons or goods on board another ship, or to another ship, is limited only where such injury is caused by "the improper navigation" of his own ship; and that his liability as carrier is limited whether the loss arises from improper navigation, or from some other cause. There has been some doubt as to the meaning of the words "improper navigation." In *The Warkworth*, the effect of the Act was stated by Brett, M. R., to be that the owner's liability is limited for "all damage wrongfully done by a ship to another whilst it is being navigated, where the wrongful action of the ship by which damage is done is due to the negligence of any person for whom the owner is responsible" (*t*).

(*o*) *The American* and *The Syria*, L. R. 6 P. C. 127.

(*p*) *The Englishman* and *The Australia*, (1894) P. 239.

(*q*) *The Normandy*, L. R. 3 A. & E. 152; *The Calcutta*, 17 W. R. 744; *Brown* v. *Wilkinson*, 15 M. & W. 391. In America, it seems that if the wrong-doing vessel is sunk, the owners are discharged: 2 Parsons on Shipping (ed. 1869), 120—110; 9 U. S. Stat. at Large, 635; *Norwich Steamboat Co.* v. *Wright*, 13 Wall. 104.

(*r*) 9 & 10 Vict. c. 93; 27 & 28 Vict. c. 95.

(*s*) *Gladholm* v. *Barker*, L. R. 1 Ch. 223.

(*t*) *Per* Brett, M. R., *The Warkworth*, 9 P. D. 145, 147. As to the meaning of "improper navigation" in an insurance case, see *Canada Shipping Co.* v. *British Shipowners' Mutual Protecting Association*, 22

In that case the collision was caused by the ship's steam steering gear failing to act at the critical moment. The gear failed to work owing to a certain pin not being in its place. The pin had worked or fallen out of its socket owing to its not being, as it should have been, a "split" pin. It did not appear by whom the improper pin had been inserted. It was held by the Court of Appeal, affirming the decision of Butt, J., that the collision and loss was caused by improper navigation, without actual fault or privity of the owners, and that their liability was limited by the Act. In the Court of Appeal (*u*) it was held that, the statute being necessary only where there has been negligence for which the owner must be responsible, it must be assumed that the damage done by *The Warkworth* was caused by negligence in fitting the steering gear, for which negligence the owner was responsible. "Improper navigation means improper navigation by the owner of the ship. Now in the eye of the law the owner does improperly navigate his ship, if, owing to the negligence of some one for whom he is responsible, his ship does damage to another. It is impossible for us to treat 'improper' as equivalent to 'unskilful'; on the contrary, it means 'wrongful.' A person who uses his ship, which is not in a condition to be so employed, does in reality improperly navigate her" (*x*).

An injury done to a vessel in tow by her tug during the performance of the towage contract was held to be caused by "improper navigation" within the meaning of the Act, and the tug-owner's liability was limited (*y*).

It seems that a collision between a ship being launched and another afloat, caused by the fault of those in charge of the launch starting her at a wrong time, is injury by improper navigation within the meaning of the Act (*z*).

Q. B. D. 727; 23 Q. B. D. 342; *Good* v. *London Steamship Owners' Mutual Protecting Association*, L. R. 6 C. P. 563; *Carmichael* v. *Liverpool Sailing Ship Owners' Mutual Indemnity Association*, 19 Q. B. D. 242.

(*u*) 9 P. D. 145.

(*x*) *Per* Bowen, L. J., *The Warkworth*, 9 P. D. 146, 148.

(*y*) *Wahlberg* v. *Young*, 24 W. R. 846; 4 Asp. M. C. 27, note; 45 L. J. C. P. 783. *Aliter* in Canada: *British Columbia Towage & Transport Co.* v. *Sewell*, 9 Duval's Rep. 527.

(*z*) See *The Andalusian*, 3 P. D. 182, where, however, the point, though raised in argument, was not mentioned in the judgment. See also *per* Brett, M. R., *The Warkworth*, 9 P. D. 145, 147, as to the effect of

Shipowner liable beyond the statutory limit for interest and costs.

The shipowner is liable beyond the sum to which his liability is limited by the statute for interest on the amount of his statutory liability from the date of the collision to payment into Court, whether the claims are in respect of life or property (*a*). In the case of limited liability this is the rule, whether the ship was earning freight at the time of collision or not (*b*), and whether there are several claims or only one (*c*). And he is liable beyond the statutory amount for the costs of the action (*d*).

Wrong-doer is not purged of his fault by judgment in action limiting his liability.

The owner of a ship sunk by collision who, admitting that the collision was caused by the fault of his own ship, obtains a decree for limitation of his liability, and pays into Court the statutory amount of his liability, does not thereby escape from the legal consequences of his wrongful act in causing the collision, except so far as the Act expressly relieves him. The owner of a ship sunk in the Thames paid into Court the statutory amount of his liability. His ship was raised by the Thames Conservators (who have statutory powers to raise wrecks and reimburse themselves for the expense of raising them by sale of ship and cargo), he undertaking to pay the cost of raising. It was held that the shipowner was bound to hand over cargo on board to its owner, and that the cargo-owner was not liable to pay him anything by way of salvage or general average contribution (*e*).

Act applies only to injury to craft, and

The Act applies only where the injury is to a ship or boat (*f*), or to persons or goods on board a ship. The

negligence on shore causing improper navigation on the water.

(*a*) *The Crathie*, (1897) P. 178; *Straker* v. *Hartland* (1864), 2 H. & N. 570; *The Amalia*, 5 N. R. 164, note; 34 L. J. Ad. 21; *The City of Buenos Ayres* (1871), 1 Asp. M. C. 169; *African Steamship Co.* v. *Swanzy*, 2 K. & J. 660; *General Iron Screw Collier Co.* v. *Schurmanns*, 1 J. & H. 180; *Nixon* v. *Roberts*, 1 J. & H. 739. are similar decisions under former Acts.

(*b*) *The Northumbria*, L. R. 3 A. & E. 6. As to the justice of the practice compared with that at common law, see *per* Lord Esher, M. R., 13 P. D. 118.

(*c*) *Smith* v. *Kirby*, 1 Q. B. D. 131. It has been stated that the report of this case is incorrect; that it was not a case of collision, but of a ship capsizing through improper stowage.

(*d*) *The Dundee*, 2 Hag. Ad. 137; *Ex parte Rayne*, 1 Q. B. 982, are decisions to this effect under former Acts. A like rule prevails in America: *The Wanata*, 5 Otto, 600.

(*e*) *The Ettrick*, 6 P. D. 127. In *The Crystal*, (1894) App. Cas. 508; *The Harrington*, 13 P. D. 48, the liability of the shipowner for the expense of removing the wreck under 10 & 11 Vict. c. 27, s. 56, and 10 & 11 Vict. c. 16, was discussed.

(*f*) The word "boat" does not occur in paragraphs (1) and (2) of sect. 54.

goods or persons on board.

liability for damage to a pier, wharf, or other object ashore, and for damage to property afloat, other than that mentioned in the Act was until recently unlimited (*g*) ; it is now limited by 63 & 64 Vict. c. 32 (*h*).

Liability of shipowner carrying in a ship not his own.

The liability of a person who contracts to carry persons, animals, or goods by sea, and carries them in a ship not owned by himself, is not limited by the statute. But the

Where the carrier is a railway company.

liability of a railway company (*i*) in such a case is limited as regards animals and goods (*k*), and also, it would seem, as regards loss of life or personal injury to passengers ; but the words of the Act are somewhat obscure as regards passengers (*l*).

Other cases of unlimited liability.

The liability of owners navigating their own ships, of pilots, harbour and dock masters acting in charge of ships, of partners in a shipping adventure who work but do not own the ship (*m*), seems to be untouched by the Act, and to be unlimited.

Actions by or against the Crown.

As against the Crown there are in the Act no words limiting the liability of the subject (*n*) ; and since no action for collision can be brought against the Crown, there is of course no statutory limitation of its liability. In the case of an action against the officer in charge of a King's ship his liability is unlimited ; but whether or no damages would in such a case be paid in full depends, apparently, upon the will of the Crown.

Liability for damage to a light-ship.

If a vessel wilfully or negligently injures a light-ship, in addition to her liability for damages, she incurs a penalty of 50*l*. (*o*). Notwithstanding the words of the Act, the liability for damages is probably limited to the statutory amount in this, as in other, cases.

Liability of cargo to arrest.

The liability of cargo to be arrested in order to compel payment of freight is not affected by the Act (*p*).

Liability of

The liability of a London Trinity House pilot in respect of

(*g*) See *River Wear Commissioners* v. *Adamson*, 1 Q. B. D. 546 ; 2 App. Cas. 743.

(*h*) *Supra*, p. 153.

(*i*) 34 & 35 Vict. c. 78, s. 12.

(*k*) Including passengers' luggage: *The Stella*, (1900) P. 161.

(*l*) See *per* Lord Blackburn, *Doolan* v. *Midland Rail. Co.*, 2 App. Cas. 792, 809.

(*m*) As in *Steel* v. *Lester*, 3 C. P. D. 121.

(*n*) See *The Zoe*, 11 P. D. 72.

(*o*) 57 & 58 Vict. c. 60, s. 666.

(*p*) *The Orpheus*, L. R. 3 A. & E. 308.

neglect and want of skill is limited to 100*l.*, the amount of the bond required to be executed by him upon his appointment, together with the amount of his pilotage fee (*q*). Trinity House pilot.

The liability for damage caused by a ship owned by a limited liability company is ultimately measured by the amount of the assets of the company, amongst which the moneys payable under a policy on the ship will be included. Where the whole assets of the company consist of the ship that does the damage, and she is sunk in the collision, the injured party is without redress. Liability for damage by ship owned by single ship company.

The effect of the statute limiting owners' liability when it operates in conjunction with the rule as to division of loss is fully discussed in a previous chapter (*r*). It may here be stated shortly that, where both ships are in fault, and the damage to ship A. and to cargo on board her is greater than that to ship B., and B. limits her liability pursuant to the statute, the damages recoverable by A. will be so much of the sum representing B.'s statutory liability as bears to the entire sum the ratio which the difference between the losses on the two ships bears to the aggregate losses of owners of cargo on board A. and other persons entitled to claim against B.; and, further, that B. can recover nothing (*s*). Combined operation of Act limiting liability and rule as to division of loss.

The Act provides (sect. 506) that insurances effected against any of the events in which the liability of the shipowner is limited, and occurring without actual fault or privity of the owners, shall not be invalid by reason of the nature of the risk. There seems no doubt that such insurances are valid apart from the Act (*t*). Insurances against loss where liability is limited are valid.

Where the amount of the fund in Court is insufficient to satisfy in full claims in respect of loss of life and loss of cargo, the former are entitled to the whole of that part of the fund which represents the 7*l.* per ton; and they are entitled to prove against the residue of the fund *pari passu* with the cargo claimants. The latter have no priority of proof Priorities of claimants in respect of loss of life and loss of goods.

(*q*) 57 & 58 Vict. c. 60, s. 620.

(*r*) *Supra*, p. 127.

(*s*) *Stoomvaarts Maatschappy Nederlands* v. *Peninsular and Oriental Steamship Navigation Co.*, 7 App. Cas. 795.

(*t*) There seems to have been an idea that such insurances might be invalid for want of interest in the insurer: Hansard's Parl. Deb., vol. 166, p. 2227.

against the part of the fund which represents the 8*l.* per ton (*u*).

Proof by the Crown.

The Crown may prove against the fund in Court, both by the general law and by 31 & 32 Viet. c. 79, s. 3 (*x*).

Liability where some claims settled.

In Scotland it has been held that where the shipowner has settled out of Court some of the claims in respect of a collision for which his ship was in fault, he is entitled, upon a petition for limitation of his liability, to take into account the sums previously paid in respect of such claims; and that the other claimants are not entitled to any more than they would have recovered if none of the claims had been settled (*y*). As to the application of the Act where some claimants have recovered damages in an action abroad, see *The Crathie* (*z*); and if damages have been assessed in a collision action, and subsequently a limitation action is commenced by one of the parties to the collision action, the amount of the assessment in the collision action is not binding on the claimant against the fund in this limitation action (*a*).

Right of bottomry bond-holder on freight, where wrong-doer limits his liability.

Where a ship negligently damages another, and the owners of the latter obtain a judgment limiting their liability under the statute, the holder of a bottomry bond on freight earned by the injured vessel is entitled to share rateably in the amount to which the liability of the wrong-doer is limited (*b*).

(*u*) *The Victoria* (No. 2), 13 P. D. 125. See *Nixon* v. *Roberts*, 1 J. & H. 739; *Leycester* v. *Logan*, 26 L. J. Ch. 306, decided upon 17 & 18 Vict. c. 104, s. 514; *Burrell* v *Simpson*, 4 Ct. of Sess. Cas. 4th ser. 177.

(*x*) *The Zoe*, 11 P. D. 72; *The Winkfield*, (1902) P. 42.

(*y*) *Rankine* v. *Ruschen*, 4 Ct. of Sess. Cas. 4th ser. 725.

(*z*) (1897) P. 178

(*a*) *Van Eijck* v. *Somerville*, (1906) A. C. 489; 10 Asp. 263.

(*b*) *The Empusa*, 5 P. D. 6.

CHAPTER VIII.

TUG AND TOW.

For some purposes tug and tow are treated as one ship.

It is a principle of Admiralty law established by a series of decisions, that where one ship is in tow of another, the two ships are, for some purposes, by intendment of law, regarded as one, the command or governing power being with the tow, and the motive power with the tug.

For the purposes of the regulations.

Therefore, in applying the collision regulations, the Court usually treats the tug and her tow as one ship, and that a steam or sailing ship according as the towing ship is under steam or not (*a*). But a tug with a ship in tow has not the same facility of movement as if she were unincumbered. She is not, therefore, in the same degree, mistress of her own movements, and in some cases she cannot, by stopping or reversing her engines, at once stop or back the ship in tow (*b*). This, however, is a question of fact, and if it is practicable to comply with the regulations a tug omitting so to do will be held to blame (*c*). In taking measures to avoid a third vessel a tug has to consider her tow; and a step that would be right, and take her clear, if she were unincumbered, may bring about a collision between her tow and the ship which she herself has avoided (*d*). Although, therefore, it is the duty of a tug with a ship in tow to comply, so

(*a*) *The Cleadon*, 14 Moo. P. C. 97; *The American* and *The Syria*, L. R. 6 P. C. 127, 132. The same has been held in America: *New York, &c. Co.* v. *Philadelphia, &c. Co.*, 22 How. 461; *The Ivanhoe* v. *The Martha M. Heath*, 7 Benedict. 213; *The Civilta* and *The Restless*, 6 Benedict. 309; 13 Otto, 699; *The Farewell*, 8 Quebec L. R. 87. There has been no decision as to a sailing ship towing another, but there can be little doubt that the principle stated in the text would be applied in this case also.

(*b*) *The Lord Bangor*, (1896) P. 28; *The Syracuse*, 9 Wall. 672; but the "stop and reverse" rule was applied in *The Fred. W. Chase*, 31 Fed. Rep. 91.

(*c*) *The Challenge* and *Duc d'Aumale*, (1905) P. 198; 10 Asp. 105.

(*d*) See *The Arthur Gordon* and *The Independence*, Lush. 270; *The Kingston-by-the-Sea*, 3 W. Rob. 152.

far as is possible, with the regulations for preventing collisions, it is also the duty of a third ship to make allowance for the incumbered and comparatively disabled state of a tug, and to take additional care in approaching her (*e*). Thus, a sailing ship has the right of way as against a steamship towing other craft, but she is not entitled under all circumstances to insist upon this right.

American cases.

The application of this rule, and of others of the collision regulations, as applied to tug, tow, and a third ship, has received more attention in the courts of America than in those of this country. Some of the decisions are not easy to reconcile, but there seems to be a tendency to throw a greater burden upon sailing ships, and other craft which *primâ facie* under the regulations have the right of way, than is recognized by the English Courts. This is doubtless owing to the extreme length and unwieldiness of the tows that are common in American waters. The following cases illustrate the general drift of American decisions :—

Where a tug was towing seventeen canal boats, and a sailing ship, with plenty of sea room, had the wind free, held that the latter was in fault for not keeping out of the way of the tug and tow (*f*). But where a tug deliberately went on without altering her course, relying upon the sailing ship, which was beating to windward in a river, going about when signalled to do so by the tug, the tug was held in fault (*g*). Again, a schooner was held in fault for not having tacked short of the tug and tow, and the tug for having attempted to go ahead of the schooner (*h*).

A schooner, A., close-hauled, was heading to cross a tug with barges in tow. Owing to the presence of another schooner, B., which had the wind free, and was overtaking the tug, it was, at the outset, the duty of both tug and schooner A. to keep their courses. When B. had cleared both, A. stood on, fouled the tow line, and was struck by the first barge of the tow. It was held, in America, that A. was in

(*e*) *The American* and *The Syria*, L. R. 6 P. C. 127; *The La Plata*, Swab. 220, 298. Cf. *The Rose Culkin*, 52 Fed. Rep. 328.

(*f*) *The A. P. Cranmer*, 1 Fed. Rep. 255; 8 Fed. Rep. 523. Cf. *The Mayumba*, 21 Fed. Rep. 476.

(*g*) *The Howard Carroll*, 41 Fed. Rep. 159. Cf. *The Marion W. Page*, 36 Fed. Rep. 329.

(*h*) *The Isle of Pines*, 24 Fed. Rep. 498.

fault for not having gone about: and that the tug was also in fault for not having eased so that the tow line might have slacked for A. to pass over (*i*).

On the other hand, a tug is not at liberty to increase unnecessarily the risk and dangers of navigation by having in tow a train of excessive length. Thus a tug having in tow three ocean barges with a scope of hawser between each barge of 150 fathoms, so that she and her tow were together at least two-thirds of a mile in length, was (in America) held in fault for collision with a ship at anchor in Chesapeake Bay (*j*). Though such a tow might be proper in the open sea, it was held to be improper in the Bay, where ships were likely to be met with. Similarly, where a tug in a fog, with two barges in tow on a long tow line, chose to cruise about across the entrance to Boston Harbour, waiting for the fog to clear, and a collision occurred with a ship leaving the harbour, the tug was held in fault for unnecessarily obstructing the fairway (*k*). The risk to other craft which arises from the practice of towage at sea with hawsers of great length throws upon the tug and tow the duty of exercising the greatest caution (*l*) where there is a long tow line out, but such a tow line is not in itself evidence of actual negligence (*m*).

Whether tug and tow are one ship, so that one is affected by the fault of the other.

The principle that the tug and her tow are in law regarded as one ship has been applied in Admiralty so as to make one of them liable for a collision with a third ship caused by the fault of the other. Unless the actual wrong-doer in these cases is the servant or agent of the owner of the ship sued, the condemnation in Admiralty of the ship sued appears to conflict with the principle laid down in some of the cases (*n*), that the responsibility of the owner at law and the liability of the ship in Admiralty are always concurrent. It is necessary, therefore, to consider in some detail the respective liabilities at law of the owners of the tug and of the owners of the tow, and in Admiralty of the tug and of the tow, where

(*i*) *The Minnie C. Taylor*, 52 Fed. Rep. 323.

(*j*) *The John H. May*, 52 Fed. Rep. 882.

(*k*) *The Admiral Schley*, 115 Fed. Rep. 378.

(*l*) *The Gladiator*, 79 Fed. Rep. 445.

(*m*) *The Patience*, 167 Fed. Rep. 855, at p. 860, and cases there cited.

(*n*) A principle which has not always been adhered to: *supra*, pp. 70 *seq.*

there is a collision between the tug and a third ship, or between the tow and a third ship.

The tug is the servant of the tow; meaning of the expression.

It is a term of the ordinary towage contract that, as regards the conduct and navigation of the two ships, the tug and those on board her shall obey the orders of those on board the tow (*o*). This relationship between the two ships is expressed by the saying, to be met with in some of the cases, "that the tug is the servant or in the service of the tow" (*p*).

Tow liable in Admiralty for the fault of her tug.

This expression has led to the tow being held in Admiralty liable for the fault of those on board the tug, where such fault leads to a collision between the tow and a third ship; and insurers of the tow have consequently been held liable, upon the collision clause in a policy, for damages paid by the tow to a third ship in respect of a collision between the tug and a third ship caused by the fault of the tow (*q*).

In *The Ticonderoga* (*r*), a vessel in tow of a steamship, which by the terms of her charter-party she was bound to employ, struck and injured a third ship. The collision was caused by the fault of those on board the steamship. It was held by Dr. Lushington that the tow was liable in Admiralty. "In cases of one vessel coming into collision with another, and the vessel proceeded against having been in charge of a steamer, there can be no doubt whatever that the vessel which has the steamer in her employ is responsible both for her own acts and those of the steamer" (*s*).

A barque in tow of a tug was approaching the entrance of the Regent's Canal Basin. The tug, without orders from the barque (which was in charge of a compulsory pilot), improperly altered her course, and thereby caused the barque to strike and injure the pier head. It was held by Sir R. Phillimore that the barque and her owners were liable: "The tug was the servant of *The Sinquasi* (the barque), and *The Sinquasi* is responsible for what the tug did" (*t*). It seems to have

(*o*) See *infra*, p. 171.

(*p*) See *per* Sir R. Phillimore in *The Mary*, 5 P. D. 14, 16; *The Sinquasi*, 5 P. D. 244; *per* Sir R. Collier in *The American* and *The Syria*, L. R. 6 P. C. 127, 132; and *per* Jeune, P., in *The Englishman* and *The Australia*, (1894) P. 239; *The Adam W. Spies*, 70 L. J. Ad. 25.

(*q*) *The Niobe*, *McCowan* v. *Baine*, (1891) App. Cas. 401.

(*r*) Swab. 215.

(*s*) *Aliter* in Canada, *The William*, 4 Quebec L. R. 306.

(*t*) *The Sinquasi*, 5 P. D. 241.

been held, also, that under the special circumstances of the case it was the duty of the tug to alter her course without waiting for orders from the tow.

In *The Bianca* (*u*) it seems to have been assumed that the ship proceeded against, the tow, was responsible for the fault of those on board the tug. And in *The American* and *The Syria* Sir R. Collier stated the law to be that "the tug is in the service of the tow; the tow is answerable for the negligence of her servant, and is for some purposes identified with her" (*x*).

It seems clear, therefore, that in Admiralty the tow is liable for a collision between herself and a third ship by the fault of those on board the tug; and further, that her liability is independent of the question whether those on board the tug are the servants of the owners of the tow, in the sense that the latter would be liable at law for the negligence of the former. There seems reason to think that the habit of personifying the ship, which, as pointed out above, has produced confusion in other cases, has led to the condemnation in Admiralty of a ship in tow for the fault of those on board her tug, without sufficient consideration of the question whether the wrong-doer is a person for whose acts the owner of the ship sued is liable at law. The *ratio decidendi* in *The Ticonderoga*, *The Sinquasi*, and other cases above cited, seems to have been as follows: the collision was caused by the fault of the tug; the tug is the servant of the tow; therefore the tow is liable for the collision (*y*). The soundness of this reasoning appears to depend upon the assumption that the ship with which the wrong-doer does the wrong, or on board which he happens to be when the wrong is done, is in Admiralty herself a wrong-doer—a proposition which, at the present day, there would be difficulty in establishing.

Double command; divided responsibility.

The reason for the rule that, under ordinary circumstances, the tug must obey the orders of the ship in tow, is said to be, in order that there may be no divided responsibility and no double command. "I am well aware," said Dr. Lushington, "that mischief may in some instances arise from pilots (in

(*u*) 8 P. D. 91.
(*x*) L. R. 6 P. C. 127, 132.
(*y*) See also *per* Sir R. Collier in *The American* and *The Syria*, L. R. 6 P. C. 127, 132; *The Mary Hounsell*, 4 P. D. 201.

charge of the tow) having entire control over steam tugs, and giving directions contrary to the judgment and experience of the masters of steam tugs, conversant as they are with every part of the waters in which they are employed. At the same time, I feel still greater difficulties would be occasioned by two conflicting and independent authorities being exercised in the navigation of one and the same vessel" (*z*). These observations were made with reference to towage of a heavy ship at sea. Different considerations arise where the towage is in a river, harbour, or other frequented and confined water, and the craft in tow are barges, canal boats, or other craft having little or no control over their own movement. And although it may, in some cases, be expedient that the responsibility for the navigation of tug and tow should be vested in one person, that is no reason for making owners of craft in tow liable for the negligence of persons on board the tug who are not their servants or agents (*a*).

Whether tow liable for collision between tug and third ship by fault of tug.

Whether the doctrine that the tug is the servant of the tow, so as to make the latter liable for the negligence of the former, would be carried so far as to make her (the tow) liable in Admiralty for a collision between the tug and a third ship, has not been decided. It has been held that a ship may be sued and condemned in Admiralty for negligence on her part which causes a collision between two others (*b*); but it seems doubtful whether a tow, free from fault as regards those on board her, could be condemned for a collision between her tug and a third ship caused by the fault of those on board the tug, who were not in the employment of the owners of the tow.

Collision between tug and third ship by fault of tug.

In the cases above considered the collision was between the tow and a third ship, and the action was against the tow. In the following case the collision was between the tug and a third ship.

A tug was towing a ship in charge of a compulsory pilot. The tug struck and injured a third ship. It was held that, assuming the collision was caused entirely by the fault of the

(*z*) *The Christina*, 3 W. Rob. 27, 33. Cf. *The Duke of Sussex*, 1 W. Rob. 270.

(*a*) As pointed out in *The Quickstep*, 15 P. D. 196.

(*b*) See *The Sisters*, 1 P. D. 117, and cases cited *supra*, p. 28.

pilot of the tow in wrongly directing the tug's course, still the tug was liable for the injury to the third ship (*c*). It was further held, the pilot being compulsorily in charge of the tow, that the exemption from liability which usually accompanies compulsory pilotage did not protect the tug.

The American and *The Syria* (*d*) was not a case of ordinary towage, and in it different principles were applicable. *The Syria* and *The American* belonged to the same owners. *The Syria* was disabled in a foreign port. The master of *The American* took her in tow in order to bring her to England. On the passage home, by the fault of those on board *The American*, a collision occurred between *The American* and a third ship, *The Aracan*. *The Syria* also struck and injured *The Aracan*. It was held that *The American* was liable for the whole of the damage, and that *The Syria* was not liable at all. *The American* was not employed by the master of *The Syria*, but took her in tow partly for the benefit of the common owners, and partly to obtain salvage from the owners of cargo on board *The Syria*. It was held that, the case not being one of ordinary towage, *The Syria* was not liable for the fault of *The American*. But it seems to have been assumed by the Court that, if the case had been one of ordinary towage, *The Syria* would have been liable. It had been held by Sir R. Phillimore in the Court below that *The American* and *The Syria* were in law one ship, and that therefore *The Syria* was liable in Admiralty for the fault of *The American*. This decision was reversed by the Privy Council upon the ground above stated, that the general rule did not apply, because here the governing power was with the towing ship and not with the tow. *The American and The Syria.*

The same principle was applied in *The Quickstep* (*e*). The steamship *Charles Dickens*, in the river Tees, was in collision with a hopper barge in tow of *The Quickstep*, by her own fault in having no look-out, and by the fault of *The Quickstep* in having no towing light. There was no fault on the part of those on board the barge, who could do nothing to avoid

(*c*) *The Mary*, 5 P. D. 14. The decision upon this point was unnecessary, the tug being herself in fault.

(*d*) L. R. 4 A. & E. 226; on app. L. R. 6 P. C. 127.

(*e*) 15 P. D. 196.

the collision. A Divisional Court (Sir J. Hannen and Butt, J.) held that *The Quickstep* owners were liable for half the loss, and that the barge owners were under no liability. In reviewing the cases, the Court dissented from the view of Dr. Lushington, that the inexpediency of having a divided command would in itself be a sufficient reason for making the ship in tow liable (*f*); the real question being, whether or no those on board the tug were the servants or agents of the owners of the tow (*g*).

Tow lashed alongside tug.

These principles would appear to exonerate from liability a dumb barge or other craft lashed alongside a tug and navigated wholly by the tug, whether the damage to the third ship is by contact with the tug or craft alongside. Much of the towage in New York harbour is of this character, heavy floats loaded with railway cars being commonly transported in this way. The case of a large steamship, under steam herself, with a tug alongside to assist her in stopping or turning, is different (*h*).

Liability at law of tug-owners and of tow-owners.

We propose now to consider the liability at law of the owners of the tug and of the tow respectively for a collision between the tug or the tow and a third ship. First, where the collision is between the tow and a third ship by the fault of those on board the tow. In this case there is no difficulty: the tow-owners are liable for the damage caused by the negligence of their servants, the crew of the tow. And it seems equally clear that the tug-owners are not liable. They are in no sense masters or employers of the crew of the tow; and the doctrine that tug and tow are in law one ship can have no application in such a case.

Collision between tow and third ship by fault of tow.

Between tow and third ship by fault of tug.

Secondly, the case of a collision between the tow and a third ship by the fault of those on board the tug. It seems that in this case the crew of the tug, though the general servants of the owners of the tug, are held to be also the servants of the owners of the tow, so as to make the tow-owners liable for their negligent acts in the course of the

(*f*) *Ante*, p. 171.

(*g*) Following the language of Lord Tenterden in *Laugher* v. *Pointer*, 5 B. & C. 547, 578: and of Clifford, J., in *Sturgis* v. *Boyer*, 24 How. 110, 122.

(*h*) Cf. *The E. A. Packer*, 49 Fed. Rep. 92. Cf. *The Devonian*, (1901) P. 221.

towage (*i*). In *The Sinquasi* (*infra*), and *The Englishman* and *The Australia* (*infra*, p. 176), where tug and tow were both in fault, and in *The Devonian* (*supra*, p. 55), where the tug alongside had a wrong riding light, the tow-owners were held liable. The liability of the tug-owners in such a case seems clear.

Between tug or tow and third ship by fault of tow giving wrong orders to tug.

Thirdly, a collision between the tug or the tow and a third ship by the fault of those in charge of the tow in wrongly directing the course of the tug. Here the tug-owners would be liable as employers of the actual wrong-doer, the helmsman of the tug, and not the less so because their servant is bound by the towage contract to obey those on board the tow (*k*). And it is conceived that the tow-owners would also be liable; for it was the wrong order given by their servant that caused the collision. If no order were given by those on board the tow, the owners of the tug would be liable, since it is the duty of those on board the tug to keep both tug and tow clear of other ships without waiting for orders from the tow (*l*). And it seems that the owners of the tow are also liable in this case. Assuming that those on board the tug are not the servants or agents of the owners of the ship in tow, it seems that the omission to direct the tug to keep clear of the third ship is negligence making the owner of the tow liable for the damage to the third ship (*m*).

Where tow gives no order to tug.

A strong opinion to this effect was expressed by Sir J. Hannen in *The Niobe* (*n*). The ship *Niobe* was being towed from Greenock to Cardiff by the tug *Flying Serpent*. It was a sea towage, and the scope of tow rope was 100 fathoms. The steamship *Valetta*, on a N.E. by E. course, sighted the lights of *The Flying Serpent* three miles off on her port bow. *The Valetta* kept her course. *The Flying Serpent*, on S.S.W. course, struck *The Valetta* on her port bow with her stem and starboard bow. There was a bad look-out on *The Niobe*, and in consequence her helm was not ported until it was too late

(*i*) See *Rourke* v. *White Moss Colliery Co.*, 1 C. P. D. 556; 2 C. P. D. 205; *Dalyell* v. *Tyrer*, E. B. & E. 899, where it seems to have been thought that the charterers, as well as the owners, might be liable: *Johnson* v. *Lindsay*, 23 Q. B. D. 508; *Jones* v. *Corporation of Liverpool*, 14 Q. B. D. 890.

(*k*) See *Fenton* v. *Dublin Steam Packet Co.*, 8 A. & E. 835.

(*l*) *The Sinquasi*, 5 P. D. 241.

(*m*) See *The Energy*, L. R. 3 A. & E. 48; and the cases on last page.

(*n*) 13 P. D. 55.

to avoid collision. The Court was advised by the assessors, and held, that it was the duty of *The Niobe* to have ported before she did, and that by so doing she would either have girted the tug, and so forcibly altered her course, or would have attracted the tug's attention, warned her of the danger, and caused her to alter her helm. The fault of the tug was not contested, her owners admitting liability. Under these circumstances it was not necessary to decide the question of law as to the liability of the tow-owner for the negligence of those on board the tug; but Sir J. Hannen expressed the opinion that where the collision would not have occurred if those on board the tow had not been negligent in directing the course of the tug, the tow-owners would be liable for a collision between the tug and a third ship; and further, that their liability arises not from the existence of any relationship of master and servant between them and the crew of the tug, but because of the control which the towage contract gives them over those on board the tug. *Quarman* v. *Burnett* (*o*), said Sir J. Hannen, was not an authority against the liability of the tow-owners in such a case, their liability being similar to that of the passenger in a jobbed carriage, who takes upon himself to direct the driver.

Between tug and third ship by fault of tug and tow.

Fourthly, for a collision between the tug and a third ship, caused partly by the fault of those on board the tug, and partly by the fault of those on board the tow, the tow-owner is liable for the whole (*p*); or, where all three ships, tug, tow, and third ship are in fault, for half the loss. Thus, where the tug and third ship were both injured, and each sued the other, judgment went against both tug and tow for half the loss of the third ship, and against the third ship for half the loss of the tug (*q*).

Sudden movement of tug causing collision.

In *The Niobe* (*supra*) it was proved that the collision would not have happened if there had been a proper look-out on board the tow, and that the tow could have controlled the

(*o*) 6 M. & W. 499.

(*p*) *The Niobe*, 13 P. D. 55. See further as to this case, *infra*, p. 274.

(*q*) *The Englishman* and *The Australia* (No. 1), (1894) P. 239. In this case the owners of the tow applied that the owners of the third ship should, on payment of the amount of the judgment, be ordered to assign to the tow-owners the judgment against the tug. The application, purporting to be founded on 19 & 20 Vict. c. 97, s. 10, failed: S. C. (No. 2), (1895) P. 212.

movements of the tug. But if the movement of the tug is so sudden that those on board the tow could not have controlled it, the tow-owner (it was said by Sir J. Hannen in *The Niobe*) would not be liable. In *The Stormcock* (*r*), where the tug on a safe course suddenly departed from it and thereby caused a collision between the tow and a third ship, it was held that the tug was liable to indemnify the tow for damages paid by the latter for the collision. The *dictum* of Sir J. Hannen as to the non-liability of tow-owner for sudden manœuvres of the tug is not easily reconciled with the doctrine that "the tug is the servant of the tow," or with the decision in *The Sinquasi* (*s*).

Liability where the command is with the tug.

The doctrine that the tug is the servant of the tow is inapplicable where not only the motive power, but also the command, is with the tug. Thus, where the towing ship is a salvor, and the command of both ships has been expressly or impliedly handed over to those in charge of her; or where she has picked up a derelict, or is towing a fleet of dumb barges, it would seem that the towing ship and her owners are alone liable for damage done by herself or her tow; and this was the effect of the decisions in *The American* and *The Syria*, and in *The Quickstep*, mentioned above (*t*).

Compulsory pilot in charge of tow.

Where a ship in tow is in charge of a compulsory pilot, there is doubt whether the tug and her owners are free from liability for a collision between a third ship and the tug or her tow caused entirely by the fault of the pilot. The ship in tow and her owners are clearly free from liability in such a case (*u*). In a case decided under 6 Geo. 4, c. 125, Dr. Lushington said:—"If a licensed pilot is on board (a vessel in tow), and his orders are obeyed, the owners are absolved from responsibility for damage occasioned by such vessel. But if the pilot was to be deprived of his authority, and the (tug) steamer was not bound to follow his directions, and a collision ensued, the (tug) steamer would be the agent of the owners of the vessel in tow, and the owners of that vessel would no longer be protected by the Act of Parlia-

(*r*) 5 Asp. M. C. 470.
(*s*) 5 P. D. 241.
(*t*) *Supra*, p. 173.
(*u*) *The Ocean Wave*, L. R. 3 P. C. 205.

ment" (*x*). These observations seem applicable at the present day as regards the liability of the ship in tow when a pilot is on board and in charge by compulsion of law. And there would seem to be difficulty in holding the owners of a tug to be liable for acts of her crew for which the compulsory pilot is responsible, and which are negligent only so far as they are in pursuance of his orders. In *The Mary*, however, it was considered by Sir R. Phillimore that in Admiralty the tug would be liable in such a case (*y*); but the point was not expressly decided, for those on board the tug were, in fact, negligent. It was held by Dr. Lushington in several cases that the tug is free from liability in such a case (*z*); and although these decisions were not under the existing Pilotage Act, the reasons upon which they were founded seem to be equally cogent at the present day as regards the non-liability of the tug-owners. Where there is negligence on the part of the tug-owner or the tow-owner, compulsory pilotage will, of course, be no defence (*a*).

Tug employed compulsorily.

In some harbours (*b*) the local Act requires that the tug belonging to the harbour authority shall be employed, or, if not employed, shall be paid for by ships entering the harbour. There has been no decision as to the liability of the shipowner for damage done by his ship when in tow of such a tug. It would seem that the principle applied in the case of compulsory pilotage would exempt him from liability. The liability of the harbour authority would depend upon the question whether the crew of the tug are the servants or agents or not. In some cases the harbour tug is chartered and not owned by the harbour authority.

Can tow-owner by contract with tug-owner free the tow from liability to third parties?

The question whether the owner of a tow can by contracting with the tug-owner that he shall have entire control of the tow discharge himself from liability to a third ship for a collision between the tow and the third ship has not been

(*x*) *The Duke of Sussex*, 1 W. Rob. 270, 273.

(*y*) 5 P. D. 14.

(*z*) *The Duke of Sussex*, 1 W. Rob. 270, 273; *The Christina*, 3 W. Rob. 27. And see *The Ocean Wave*, L. R. 3 P. C. 205; *The Gipsy King*, 5 Not. of Cas. 282, 288.

(*a*) As in *The Belgic*, 2 P. D. 57, where the tug had insufficient power.

(*b*) Cf. the Llanelly Harbour Act, 59 & 60 Vict. 186 (local).

decided. Having regard to the decisions (*c*) as to the liability in Admiralty of chartered and other ships out of their owners' possession, it is possible that the tow may be held liable in Admiralty in such cases, though, as it seems, her owners are not liable at law. The practice of tug-owners, however, is not to enlarge, but to minimise, their responsibilities, and they frequently protect themselves by a special contract against the liabilities which the ordinary towage contract throws upon them. The terms of the towage contract are usually very large, and exonerate the tug-owner from almost any kind of loss, and sometimes go so far as to indemnify the tug-owner against the result of his negligence. Thus where a tug was held liable in an action by the owners of cargo on a barge which was in collision with the tug, the owners of the tow under such a contract were held liable to indemnify the tug-owner in respect of damages and costs (*d*).

Tug and tow both in fault; judgment against both, jointly and severally.

Where both tug and tow are in fault for a collision with a third ship, judgment goes against both ships in Admiralty, as it would at law go against the owners, for the whole of the damage, jointly and severally. An application to limit the judgment against each ship, tug and tow, to half the loss (as is the practice in America (*e*)) in the first instance, was in a recent case refused. The Admiralty rule of division of loss, as applied in this country, has, it was said, nothing to do with such a case (*f*).

Between tug and tow.

The case of collision between a tug and her tow presents no difficulty. Each vessel must exhibit ordinary care and seamanship in keeping clear of the other, and must discharge such obligations as the towage contract casts upon her. A schooner, in casting off from her tug, ran into her stern, by reason of her not porting and also by reason of the tug not starboarding, as was proved to be the custom in America. Both were held to be in fault (*g*). So a tug, in assisting to

(*c*) *The Lemington*, *The Druid*, *The Tasmania*, *supra*, pp. 71 *seq.*

(*d*) *The Millwall*, (1905) P. 155; 10 Asp. 15, 110, 113.

(*e*) *Infra*, p. 182.

(*f*) *The Avon* and *The Thomas Joliffe*, (1891) P. 7; *The Englishman* and *The Australia*, (1894) P. 239. For a case of all three in fault, judgment by default for the whole loss against tow, and judgment for half the loss against tug, see *The Morgengry* and *The Blackcock*, (1900) P. 1.

(*g*) *The William W. Wood*, 66 Fed. Rep. 601.

dock a big liner, got too close to her propeller, which was being worked from time to time, and was struck by it. She was held to be in fault for being in such a position (*h*).

Two tugs in charge of one ship.

Where two or more tugs are engaged in towing the same ship, difficult questions arise as to their respective liabilities for damage to or by themselves or the ship. In an American case where the ship was put ashore by the negligence of one or both tugs, both of which were acting under the command of the master of one of them, both were held liable (*i*).

Responsibility for employment of tug.

The responsibility for the employment of a tug in ordinary cases rests with the master, whether the ship is in charge of a pilot or not. But if the employment of a tug is necessary for the safety of the ship herself, or for the safety of other ships, the master would not be justified in refusing to employ a tug upon the pilot's advising him to do so (*k*). If a vessel in tow is under way when she ought not to be moving, as in a dense fog or in a crowded dock at night-time, the presence on board of a compulsory pilot would not, it seems, exempt the owners from liability for damage done by her (*l*).

Liability of tug and tow in America.

The decisions of the American Courts as to the duties and liabilities of a tug and her tow are very numerous. They are not altogether consistent with the English cases, which were for some time dominated by the doctrine—often a misleading one—that the tug is the servant of the tow. The different character of much of the towage service in American waters, where towage of hulks and large barges at sea on tow ropes of great length (*m*) is common, and where large fleets of barges are constantly being navigated in harbours and on inland waters in charge of one or more tugs, probably accounts for the somewhat different view of the law taken by the American Courts. The law as to the liability of tow and tug has been thus stated by the Supreme Court: "Cases arise, undoubtedly, where both the tug and tow are jointly liable for

American cases.

(*h*) *The City of New York*, 54 Fed. Rep. 181.

(*i*) *The Arturo*, 6 Fed. Rep. 308, where there is an interesting judgment of Lowell, C. J.

(*k*) *The Julia*, Lush. 224; *Burrell* v. *Macbrayne*, 18 Ct. of Sess. Cas. 4th ser. 1048; *The Gertor*, 7 Asp. M. C. 472. Cf. *The Agamemnon*, 1 Quebec L. R. 333 (duty of ship at anchor, and driving, to employ tug); *The Arran*, 9 Quebec L. R. 278 (cable parting).

(*l*) See *The Borussia*, Swab. 94.

(*m*) *The Mount Hope*, 84 Fed. Rep. 910; and *The John H. May*, 52 Fed. Rep. 882 (the tow lines and tows were two-thirds of a mile long).

American cases.

the consequences of a collision; as where those in charge of the respective vessels jointly participate in their control and management, and the master and crew of both vessels are either deficient in skill, omit to take due care, or are guilty of negligence in their navigation. Other cases may well be imagined where the tow alone would be responsible; as where the tug is employed by the master or owners of the tow as the mere motive power to propel their vessel from one point to another, and both vessels are exclusively under the control and direction and management of the master and crew of the tow. . . . . But whenever the tug under the charge of her own master and crew, and in the usual and ordinary course of such an employment, undertakes to transport another vessel which, for the time being, has neither her master nor crew on board, from one point to another over waters where such accessory power is necessarily or usually employed, she must be held responsible for the proper navigation of both vessels. . . . . Assuming that the tug is a suitable vessel, properly manned and equipped for the undertaking, so that no degree of negligence can attach to the owners of the tow on the ground that the motive power employed by them was in an unseaworthy condition, the tow, under the circumstances supposed, is no more responsible for the collision than so much freight (*n*). And it is not perceived that it can make any difference in that behalf that a part or even the whole officers and crew of the tow are on board, provided it clearly appears that the tug was a seaworthy vessel properly manned and equipped for the enterprise" (*o*). This statement contains a fuller and more correct exposition of the principles upon which the respective duties and liabilities of tug and tow are to be determined than can be gathered from the doctrine that the tug and the tow are by intendment of law one ship, or that the tug is the servant of the tow. It was quoted and adopted by Sir James Hannen in *The Niobe* (*p*).

In accordance with the principles here laid down, in some

(*n*) Cf. *The Alabama* and *The Gamecock*, 2 Otto, 695.

(*o*) *Sturgis* v. *Boyer*, 24 How. 110.

(*p*) 13 P. D. 55.

American cases.

cases both tug and tow (*q*), in others the tug alone (*r*), or the tow alone (*s*), have in America been held liable for damage done to other ships by tug or tow. Where both the tug and her tow have been sued and held liable in Admiralty, the decree has gone against each of them for half the damages, with power for the plaintiff to have recourse against either of them for the balance, in case of failure of the other to pay her full moiety of the damages (*t*). The English Court has refused to adopt this practice (*u*).

The vast amount of trade that is done in America by towage, some of it of a character that is almost unknown in this country, has created a class of cases which have no parallel in our books. In these many novel points of law and seamanship have been decided. For example, whether a tow of two-thirds of a mile in length is lawful and proper (*x*), whether it is necessary that there should be some means of communication between tug and tow, whether fog-horns or signals must be sounded on all or any of the craft in tow (*y*), whether the tow line must be cast off in certain cases to enable other craft to cross the line of the tow, are amongst the questions which are frequently discussed in American Courts, but seldom in the Courts of this country. A few of the cases illustrating points that may arise in our own Courts, and the

(*q*) *The Coleman* and *The Foster*, Brown Adm. 456; *The Maybey* and *The Cooper*, 14 Wall. 204; *The Shubert* and *The Einar*, 45 Fed. Rep. 497; *The Alex. Folsom* and *The Mary B. Mitchell*, 44 Fed. Rep. 932 (tug in fault for speed. tow for being under sail); *The City of Alexandria*, 31 Fed. Rep. 427.

(*r*) *Smith* v. *The Creole* and *The Sampson*, 2 Wall. C. C. Rep. 485; *The Ogemaw*, 32 Fed. Rep. 919. Cf. *The William*, 4 Quebec L. R. 306.

(*s*) *The Cambridge*, *The Underhill*, and *The Chase*, 4 Bened. 366; *Cushing* v. *The Owners of The John Fraser*, 21 How. 184; *The Clarita* and *The Clara*, 23 Wall. 1; *The Galatea*, 2 Otto, 439; *The Imperial*, 38 Fed. Rep. 614. In *The R. B. Forbes*, 1 Sprague, 328, and *The Rescue*, 2 Sprague, 16, the tug was held liable for collision between a tow, lashed alongside, and a third ship.

(*t*) *The Virginia Ehrman* and *The Agnese*, 7 Otto, 309; *The City of Hartford* and *The Unit*, 7 Otto, 323; *The Atlas*, 3 Otto, 302; *The Juniata*, *ibid.* 337; *The Sterling* and *The Equator*, 16 Otto, 647; *The Webb*, 14 Wall. 406; *Munks* v. *Jackson*, 66 Fed. Rep. 571.

(*u*) *The Avon* and *The Thomas Joliffe*, (1891) P. 7; *The Englishman* and *The Australia* (No. 1), (1894) P. 239.

(*x*) *The H. M. Whitney*, 86 Fed. Rep. 697; *The Gladiator*, 79 Fed. Rep. 445; *The Mount Hope*, 84 Fed. Rep. 910.

(*y*) *The Raleigh*, 44 Fed. Rep. 781; *The H. M. Whitney*, 77 Fed. Rep. 1001; 86 Fed. Rep. 697; *The Harold*, 84 Fed. Rep. 698; *The W. H. Gratwick*, 81 Fed. Rep. 590.

application of the principles laid down in *Sturges* v. *Boyer*, are given below. American cases.

A barque and a schooner in tow of two tugs, and with their officers and crews on board, were navigating New York harbour. Those on board the vessels in tow took no part in the navigation as regards directing the courses of their tugs, and both were taken by their tugs into water where under the local rules they had no right to be, and where they fouled each other. It was held that, though both tugs were in fault, neither of the ships in tow was in fault, and that neither of them was liable in damages to the other (*z*). There can be little doubt that, in this country, each would have been liable for half the loss of the other. Tug alone liable.

Where a tug, for her own purposes, and without the consent of the other ship, took hold of a vessel alongside a wharf to move her, it was held that the tug was liable for any damage the vessel might do, whether those on board her might have avoided it or not (*a*).

Where one member of the tow got adrift and did damage whilst the tug was "singling out" her tow, it was held that the tug was liable (*b*). In another case the tug was held liable, because her master had negligently moored to a wharf three of his barges, one of which got adrift and fouled a ship at anchor (*c*). In another (*d*) case the tug was held liable, because she had more craft in tow than she could manage. So where a steamship, in order to extricate herself from danger caused by a heavy raft in tow of two tugs, put her engines full speed ahead, broke the raft up, and forced her way through it, it was held that she was not liable for the damage to the raft which the tugs were unable to control (*e*).

In a heavy gale blowing across their courses, the tows of two tugs sagged to leeward and damaged each other. Both tugs were held in fault for not keeping the tows clear of each

(*z*) *The Doris Eekhoff*, 50 Fed. Rep. 134.

(*a*) *The Ben Hooley*, 6 Fed. Rep. 318.

(*b*) *The Blanche L.*, 68 Fed. Rep. 939; *The R. C. Veit*, 56 Fed. Rep. 122, where the tow got adrift by her own fault.

(*c*) *The P. J. Nevius, The Wideawake*, 67 Fed. Rep. 158.

(*d*) *The Richmond, The E. Harpershausen*, 63 Fed. Rep. 1020.

(*e*) *The Athabasca*, 15 Fed. Rep. 651.

American cases.

other (*f*). A tug with a long tow rounding a bend in a river, where there was a cross set of tide, was held in fault, as against a third ship, for allowing her tow to sag across the river so as to occupy half the starboard side of the fairway (*g*).

Where the pilot of a barque in tow, who was specially employed to take her through a narrow and dangerous passage, being in charge of both tug and tow, proposed to go on one side of a rock, but the tug, seeing other craft in the way, without orders from the pilot, and in spite of his remonstrances, altered her course in order to go on the other side of the rock, upon which the barque took the ground, it was held that the tug was liable for the damage (*h*).

If the tow-line parts, by reason of the tug suddenly going ahead and putting an unnecessary strain upon it, and damage is done to a third ship, the tug is liable (*i*) ; but if it carries away because it is improperly made fast on board the tow, the tow is liable (*k*).

A tug, being unable to come to terms with her tow, a schooner, as to the charge for towing, cast off the tow-line, so that the schooner went against a dock and was damaged. The tug was held liable (*l*). So where a tug salvor started to tow off a lee shore without getting the ship's anchor, and set another ship adrift by fouling her anchor with the anchor of the first ship, the tug was held liable for the consequent loss of the second ship (*m*).

A tug took her tow so close to a ship at anchor that, on suddenly changing her course, the tow-line parted, and the tow fouled the ship at anchor. The tug was held liable (*n*).

A tug was held in fault for a collision between her tow and a third ship, caused by a squall which might have been foreseen, and guarded against by anchoring (*o*).

(*f*) *The Robert Burnett*, 46 Fed. Rep. 415.
(*g*) *The Alicia A. Washburn*, 19 Fed. Rep. 788.
(*h*) *The Strathay*, 27 Fed. Rep. 562.
(*i*) *The Young America*, 26 Fed. Rep. 174.
(*k*) *The Natchez*, 73 Fed. Rep. 267.
(*l*) *The A. M. Ball*, 43 Fed. Rep. 170.
(*m*) *The Addie B.*, 43 Fed. Rep. 163.
(*n*) *City of Philadelphia* v. *Gavagnin*, 62 Fed. Rep. 617.
(*o*) *The Young America*, 25 Fed. Rep. 207.

A long and heavy tow of barges in a winding river, with a strong tide, requires two or more tugs to control it; one of these is, in America, styled the principal or governing tug and the other the "helper." A principal tug, lying at anchor, with her tow astern, has been held liable for not causing her "helper" to sound a fog-horn, in accordance with local rules, as she lay alongside the two (*p*). American cases.

A tug and the third ship were both in fault for a collision between the tow and third ship. The tow sued the tug, and a decree passed for the whole of the loss against the tug (the third ship not being sued (*q*)).

Where a collision may be avoided by casting off the tow line, it is the duty of the tug (or tow) to do so (*r*).

Two tugs were moving an ocean steamship in New York harbour. The officers and crew were on board the liner, but were acting under the orders of the master of one of the tugs, who was in charge of the operation. It was held that the tow and both the tugs were liable for a collision between the tow and a third ship. The owner of the two tugs had undertaken, as "independent contractor," to move the steamship, and the tug-master was in charge of the whole manœuvre. Nevertheless, the tug-owners and the owners of the steamship were held liable as joint tort-feasors. Both ships being damaged, the tow and the two tugs were held liable in equal shares for the damage to the third ship, and the damage to the tow was divided between herself and the two tugs (*s*). Tug and tow both liable.

So where the pilot of a barque in tow was in charge of the navigation of tow and tug, and a collision occurred between the barque and a third ship, both tug and tow were held liable (*t*).

Where a tug was partly in fault for damage to the tow by collision with a pier, the rule of division of loss was applied as between tug and tow, the damage having been caused by the fault of both (*u*). And so where a schooner lashed alongside her tug was damaged by collision with a third ship, both

(*p*) *The Raleigh* and *The Niagara*, 44 Fed. Rep. 781. Cf. *The James Berwind*, 44 Fed. Rep. 693, where the tug and tow were under way.

(*q*) *The Troy*, 28 Fed. Rep. 861.

(*r*) *The F. W. Wheeler*, 78 Fed. Rep. 824.

(*s*) *The Express*, 52 Fed. Rep. 890.

(*t*) *The Maggie S. Hart*, 38 Fed. Rep. 765.

(*u*) *The Jonty Jenks*, 54 Fed. Rep. 1021.

American cases.

she and her tug were held in fault for navigating in water forbidden by local rules (*x*).

Tow alone liable.

A barge made fast to a tow, unknown to the tug; she broke adrift and did damage. It was held that the tug was not liable (*y*). So also where a lighter was fast to a ship in tow, which gave the order to the tug to go ahead before the lighter had cast off; the lighter being damaged, it was held that tug was not liable (*z*).

Where a tug was so small that she was controlled by the helm of her tow, which by her weight took charge of her when the course was altered, it was held that the tow was alone liable (*a*).

A tug brought a ship alongside a schooner at a wharf. The ship in tow negligently put out her fender so that it broke the schooner's rail. The ship was held alone in fault (*b*).

A schooner in tow, with her mainsail set, was struck by a gust of wind, sheered out of the wake of the tug, and struck a bridge. She was held alone in fault (*c*).

A large steamship was being hauled out of her dock in New York harbour, stern foremost, by a tug. She put her engines astern, and, gathering too much way, struck and damaged the dock. It was held that the tug was not liable (*d*).

A large steamship was approaching her pier under her own steam, in charge of a pilot, and assisted by tugs ahead and astern. She struck and sent adrift a float moored near the pier. Held that the steamship, and not the tug, was liable (*e*).

The Supreme Court (*f*) has held that the tow is identified with her tug to the extent "that she cannot escape the con-

(*x*) *The Maryland*, 19 Fed. Rep. 551.

(*y*) *Anglo-Australian St. Nav. Co.* v. *Cornell Steamboat Co.*, 32 Fed. Rep. 798.

(*z*) *The Jack Jewett*, 23 Fed. Rep. 927.

(*a*) *Biscell* v. *The Alexander*, 3 Fed. Rep. 671.

(*b*) *Wilsey* v. *The Celestial Empire*, 2 Fed. Rep. 651.

(*c*) *Stretch* v. *Tug Margaret*, 2 Fed. Rep. 255. And see next page as to the duty of the tow to follow in the tug's wake.

(*d*) *The John A. Carnie*, 49 Fed. Rep. 682.

(*e*) *Car Float, No.* 4, 89 Fed. Rep. 877.

(*f*) *The L. P. Dayton*, 13 Dav. 337.

sequences, if the collision was caused wholly or in part by the fault of that (her own) tug."

American cases.

It has been held that a tug with a fleet of barges or canal boats in tow, though she is not, like a common carrier, liable as insurer of the cargo on board her tow (*g*), is generally liable for damage to the craft in tow or the cargo on board them, and also for damage to third ships by the tow (*h*).

The contract of towage; its terms and performance.

It is an implied term in the ordinary contract of towage, as interpreted in this country, that the tug shall exercise reasonable care and skill in its performance (*i*), and that she shall implicitly obey the orders of the ship in tow (*k*). If no orders are given by the latter, it is the duty of the tug to take such a course as will carry herself and her tow clear of collision and other dangers (*l*); but it seems to have been held in the Privy Council (*m*), that it was not a breach of duty for the tug to pursue a course which, though imprudent, the pilot of the tow acquiesced in.

Duty of tug in crowded waters.

Notwithstanding the rule that, under ordinary circumstances, the tug must obey the orders of the ship in tow (*n*), it is obvious that in crowded waters, with ships passing and repassing in all directions, frequent and sudden alterations in the course of the tug must be made to clear passing craft. Under such circumstances it is the duty of the tug to keep herself and her tow clear of other vessels without waiting for orders from her tow (*o*).

(*g*) *The Stranger*, Brown, Ad. 281; *The Margaret*, 4 Otto, 494.

(*h*) See 1 Parsons on Shipping, ed. 1869, 536; *The Quickstep*, 9 Wall. 665. As to the duty of the tug with regard to the making up and navigation of the tow, see *infra*, pp. 188 *et seq.*

(*i*) *The Ratata*, (1898) App. Cas. 513.

(*k*) *The Christina*, 3 W. Rob. 27; 6 Moo. P. C. 371; *Smith* v. *St. Lawrence Tow Boat Co.*, L. R. 5 P. C. 308; *The Julia*, Lush. 224; *Spaight* v. *Tedcastle*, *infra*; *The Isca*, 12 P. D. 34; *The Niobe*, 13 P. D. 55.

(*l*) *Spaight* v. *Tedcastle*, 6 App. Cas. 217; *The Sinquasi*, 5 P. D. 241; *The Altair*, (1897) P. 105; *The Civilta* and *The Restless*, 13 Otto, 699.

(*m*) *Smith* v. *St. Lawrence Tow Boat Co.*, L. R. 5 P. C. 308. See *per* Lord Blackburn, *Spaight* v. *Tedcastle*, 6 App. Cas. 217, 222. In America considerable responsibility is thrown on the tug. Thus it has been held that it is the duty of the tug to be acquainted with the waters she navigates, and to keep her tow clear of local dangers: *The Lady Pike*, 21 Wall. 1; *The Webb*, 14 Wall. 406; *The Margaret*, 4 Otto, 494.

(*n*) *The Christina*, 3 W. Rob. 27, 33; in *The Duke of Sussex*, 1 W. Rob. 270, the decision was to the same effect, and upon similar grounds.

(*o*) See *The Sinquasi*, 5 P. D. 241, *supra*, p. 187; *The Isca*, 12 P. D.

Duty of tug to warn tow of danger.

Although it is the duty of the tug to obey the orders from the ship in tow, her duty does not end here. It has been already stated that, in the absence of orders from the tow, she is bound to show proper care and skill in the course she takes and in the performance of the towage service. And if the orders she gets from the ship in tow are manifestly wrong, it is her duty, even if the orders are given by a pilot in charge of the tow, to warn the tow of her danger. "The vessel and the lives of the crew are not to be risked because there is a law which imposes the ordinary responsibility upon one individual. . . . . It is not for the steamer (the tug), knowing the danger, to maintain, as it were, a sulky silence, and make herself, as it were, instrumental in the destruction of life and property" (*p*). But except in case of manifest incapacity or error on the part of the pilot, it would seem that it is not the duty of the tug to exercise a discretion as to carrying out the pilot's orders; nor would she be justified in disobeying them, although there may be risk of collision in carrying them out.

Damage by tug to tow.

Where the tug, in performance of a towage or salvage service, negligently damages her tow by collision, or in any other way, she forfeits her right to towage or salvage remuneration (*q*). And in an action upon the towage contract she cannot recover salvage for services rendered to the tow in consequence of collision (*r*).

Mutual duties of tug and tow under the towage contract.

Duties of the tug.

The following points have been decided with reference to the mutual duties under the towage contract of tug and tow. The tug must be sufficient as regards seaworthiness, equipment and power to perform the service she undertakes (*s*), and there is an implied warranty by her owner that she is so (*t*). If she supplies the tow-rope, she is responsible for its

34; *The India*, Ad. Div. 7th Dec. 1886.

(*p*) *The Duke of Manchester*, 4 Not. of Cas. 575, 582; 5 Not. of Cas. 470. The tug was, in this case, performing a salvage service. As to the duty of the tow to warn the tug of danger, see *The Niobe*, 13 P. D. 55.

(*q*) *The Christina*, 3 W. Rob. 27; *The Altair*, (1897) P. 105; *The Duke of Manchester*, *ubi supra*, as to salvage. But see *The Sweepstakes*, Brown, Ad. 509, where a set-off was allowed.

(*r*) *The Hjemmett*, 4 Asp. M. C. 274; 5 P. D. 227.

(*s*) *The United Service*, 8 P. D. 56; 9 P. D. 3; *The Minnehaha*, Lush. 345; *The Ratata*, (1898) App. Cas. 513.

(*t*) *The Undaunted*, 11 P. D. 46.

sufficiency (*u*). She must show ordinary skill, care, and diligence in performing the towage service (*x*). She must generally obey the orders of the tow as regards course, speed, alterations of the helm, stopping and going ahead (*y*), and also orders with reference to the tow-rope, its scope, making it fast and casting it off (*z*). If the course is left to her, she is responsible for its safety (*a*). It is her duty to keep a vigilant look-out, both on her own account and on account of her tow, since the latter cannot always see ahead (*b*). If she is compelled to cast off her tow, to save herself from collision, or for any other reason, it is her duty to pick up her tow again as quickly as possible (*c*).

A tug, being overrun by a heavy sailing ship in tow with canvas set, cast her off, and shortly afterwards the tow ran into a light-ship. She paid for the damage to the light-ship and sued the tug. It was held that the tug was justified in casting her off, and was not liable (*d*).

In America it has been held, in the case of a tug with a number of barges and river craft in tow, that it is the duty of the tug to arrange and make up her tow; to see that the tow-lines are sufficient and properly made fast; and generally to superintend and navigate the tow, so that other ships are not injured by it, and so that the barges do not injure each other (*e*). American cases.

Tug-owners are held liable for getting their tows ashore (*f*); for attempting to cross a dangerous bar in heavy weather, so that the ship in tow capsizes and is lost (*g*); for continuing

(*u*) *The Robert Dixon*, 4 P. D. 121; 5 P. D. 54; *The Echo*, 7 Benel. 70; *The A. R. Wetmore* and *The Epsilon*, 5 Bened. 147 (American).

(*x*) *The Julia*, Lush. 224; *The Rutata, supra; British Columbia Towage and Transport Co.* v. *Sewell*, 9 Duval's Rep. (Canada) 527.

(*y*) See cases, pp. 185 *seq.*

(*z*) *The Energy*, L. R. 3 A. & E. 48; *The Julia*, Lush. 224.

(*a*) *The Altair*, (1897) P. 105.

(*b*) *The Jane Bacon*, 27 W. R. 35.

(*c*) *The Annapolis* and *The Golden Light*, Lush. 355.

(*d*) *The Loyal* and *The Challenger*, 14 Quebec L. R. 135.

(*e*) *The Quickstep*, 9 Wall. 665; *The Stranger*, Brown, Ad. 281; *The Cayuga*, 16 Wall. 177; *The Francis King*, 7 Bened. 11; *The Syracuse*, 12 Wall. 167.

(*f*) *The Arturo*, 6 Fed. Rep. 308 (two tugs towing one ship); *The J. W. Paxon*, 24 Fed. Rep. 302; *The E. E. Simpson*, 60 Fed. Rep. 452; *The S. W. Morris*, 59 Fed. Rep. 616; *The S. S. Wilhelm*, *ibid.* 169; *aliter*, if the danger is unknown: *The Perrepont*, 42 Fed. Rep. 687.

(*g*) *Humboldt Lumber, &c. Association*, 60 Fed. Rep. 428. Cf. *The Bordentown*, 40 Fed. Rep. 682; *The Young America*, 25 Fed. Rep. 207.

to tow an ice-barge full of water, so that she broke in half and damaged another of the barges in tow (*h*). If the crew of a ship in tow abandon her for their own safety, it has been held in America that the towage contract is at an end (*i*); but if, through stress of weather or otherwise, the tow gets ashore, it is the duty of the tug to stand by and to do her best to extricate her (*k*). If a collision or other damage is caused by the tug suddenly going ahead and putting an unnecessary strain upon the other craft (*l*), or upon the tow-line, so that it parts, the tug is liable (*m*).

A craft known by her owner and by the tug-owner to be unseaworthy was taken in tow and sank. It was held that both were liable and the loss was divided (*n*). So, where both tug and tow attempted to force their way through ice which damaged the tow (*o*), and where a craft in tow struck a pier partly by the tug's fault, and partly by her own fault in having no man at the helm (*p*), the loss was held to have been caused by the fault of both.

Duties of the tow.

The duty of the ship in tow is to direct the course, and generally to give orders as to the conduct and navigation of the two ships (*q*); to keep a good look-out, and, in case of danger, to attract the attention of the tug by hailing or in some other manner, so as to warn her of the danger (*r*); to follow in the wake of the tug as nearly as possible (*s*); to have proper lights exhibited (*t*); in frequented waters to have the tow-rope so made fast that it can be readily cast off (*u*); and to give the order to slip when necessary (*x*).

(*h*) *Scott* v. *Cornell Steamboat Co.*, 59 Fed. Rep. 638.

(*i*) *The W. J. Keyser*, 56 Fed. Rep. 731.

(*k*) *The Young America*, 26 Fed. Rep. 174; *The Pres. Briarly*, 24 Fed. Rep. 478.

(*l*) *The Luckenback*, 15 Fed. Rep. 924.

(*m*) *The Alpha*, 27 Fed. Rep. 759.

(*n*) *The William Kraft*, 33 Fed. Rep. 847.

(*o*) *The E. A. Packer*, 42 Fed. Rep. 92.

(*p*) *The Jonty Jenks*, 54 Fed. Rep. 1021. Cf. *Conolly* v. *Ross*, 11 Fed. Rep. 342; *The William Murtaugh*, 3 Fed. Rep. 404; *The William Cox*, 9 Fed. Rep. 672 (cases of loss divided).

(*q*) See the cases cited, *supra*, pp. 186 *seq.*

(*r*) *The Niobe*, 13 P. D. 55. It was here held that this was a duty of the tow as regards a third ship with which she was in collision.

(*s*) *The Jane Bacon*, 27 W. R. 35; *The Stranger*, Brown, Ad. 281; *The Maria Martin*, 12 Wall 31; *The Ciampa Emilia*, 53 Fed. Rep. 155; *The Jacob Brandow*, 39 Fed. Rep. 831; *The Sagua*, 42 Fed. Rep. 461; as to damage done by the sudden sheering of a disabled ship in tow, see *The Edwin Hawley*, 41 Fed. Rep. 606.

(*t*) *The Mary Hounsell*, 4 P. D. 204.

(*u*) *The Jane Bacon*, 27 W. R. 35.

(*x*) *The Energy*, L. R. 3 A. & E. 48.

In *The Jane Bacon* (*y*), a ship in tow was held liable for the capsizing of a smack by the tow-rope, which caught her mast. The tug altered her helm and passed on one side of the smack; the tow, instead of following in the tug's wake, altered her helm in the opposite direction and endeavoured to pass on the other side of the smack. The tow-rope, being thus spread, caught the smack's mast and capsized her.

Mutual rights and liabilities of tug and tow in case of collision: (1) between themselves, (2) between one of them and a third ship.

The mutual rights and liabilities of the tug and tow in case of a collision between themselves, and in case of a collision between either of them and a third ship, have been the subject of decisions, and appear to be as follows:—

As between the tug and her tow, the latter would be solely liable for a collision caused to the tug entirely by the improper orders of those on board the tow, whether the collision were with the tow, or with a third ship. Thus, where a ship, having engaged a tug off Dungeness to take her to Gravesend, ordered her to take the tow-line on board at a time when the state of the weather made it unnecessary and dangerous for her to do so, it was held that the ship in tow was liable for a collision between herself and the tug which occurred whilst the line was being passed from the one ship to the other (*z*).

In the case of an ordinary towage, if no orders are given by the tow as to avoiding a third ship, and a collision occurs, between the tow and the third ship, it has been held that the tow, being in fault for giving no orders, cannot recover against the tug, either for injury which she herself received in the collision, or for damages which she was compelled to pay to the third ship. And this appears to be so, although the tug could with ordinary care have avoided the collision. A barque in charge of a compulsory pilot was being towed up the Thames. She fell in with a brig working up the river against a head wind. The pilot gave no orders to the tug, and the tug improperly attempted to cross the bows of the brig. The barque cast off her tow-line and attempted to go under the brig's stern, but failed to clear her. The collision might have been avoided if the tug had cast off the tow-line. The pilot gave no orders throughout. The barque was sued

The Energy

(*y*) 27 W. R. 35. Cf. *The W. A. Levering*, 36 Fed. Rep. 511.

(*z*) *The Julia*, Lush. 224; and see *The Robert Dixon*, 1 P. D. 121; 5 P. D. 51.

by the brig, and damages were recovered against her. In an action brought by the barque against the tug, it was held that she could not recover these damages, being herself partly in fault for the collision (*a*).

This case has been the subject of some discussion. It appears to have been assumed that the negligence of the pilot was contributory negligence on the part of the plaintiffs, or for which they were responsible, so as to prevent them from recovering for a loss caused partly by the fault of the tug. That this would be so where the pilotage is not compulsory is clear; but there is considerable doubt whether the case is the same when the pilot is in charge by compulsion of law, and is not the servant or agent of the shipowner. This question was discussed, though not decided, in a case before the House of Lords. The question was as to the liability of the tug for damage to the tow caused by her getting ashore owing to the tug's negligence, there being also negligence on the part of the compulsory pilot of the tow. It was held (in Ireland) that the tow could not, in such a case, recover against the tug. The view taken of the facts by the House of Lords rendered the decision of this question unnecessary; but Lords Selborne and Blackburn intimated their opinion that under such circumstances the owners of the tow would not be prevented by the negligence of the pilot from recovering against the tug (*b*).

Whether tow-owners affected by contributory negligence on part of compulsory pilot in charge of tow.

A further question arises in such a case, whether the rule of equal division of the loss applies as between the tug and her tow. Where, again, a tug, A., was in fault for a collision between her tow, B., and a third ship, C., and C. was also in fault for having an improper light, it was held in America that the rule of equal division of loss applied as between C. and A. (*c*). Where a pilot cutter was made fast alongside a

Rule of division of loss.

(*a*) *The Energy*, L. R. 3 A. & E. 48. And see *Smith* v. *St. Lawrence Tow Boat Co.*, L. R. 5 P. C. 308; *The Robert Dixon*, 4 P. D. 121; 5 P. D. 54. As to County Court jurisdiction for breach of towage contract, see *The Isca*, 12 P. D. 34.

(*b*) *Spaight* v. *Tedcastle*, 6 App. Cas. 217. The same question was considered in *Dudman* v. *Dublin Port and Docks Board*, Ir. Rep. 7 C. L. 518; and *The Adam W. Spies*, 70 L. J. Ad. 25; in the latter case Sir F. Jeune was prepared to hold that M. S. Act, 1894, s. 633, protected the owner. See also *British Columbia Towing and Transport Co.* v. *Sewell*, 9 Duval's Rep. (Canada) 527.

(*c*) *The James Gray* and *The John Fraser*, 21 How. 184.

tow, and owing to the negligence of the tugs, and of those in the pilot cutter in not slipping their rope, the pilot cutter was sunk by a third vessel, it was held that the pilot cutter was entitled to recover half her damages from the tugs (*d*).

American cases.

In America, the rule of division of loss is applied in cases of collision between a tug or tow and a third ship, in a manner for which there is no precedent in this country. Thus we have seen that where tug and tow are both in fault, the decree, in America, goes in the first instance against each for half the damage to the third ship. So where the tug was in fault for a collision between tow and third ship, and the third ship was also in fault, the tug was held liable for half the damages (*e*). But tug and tow are jointly and severally liable for the damage to the third ship, and the latter may sue either or both (*f*). It is held that, as between the two wrong-doing ships, the right of apportioning the damages is a substantial right, and, if one only is sued, she has a right to have the other brought in as a co-defendant; and that, in order to avoid multiplicity of suits, all the wrong-doers should be sued in the first instance (*g*).

In this country, where all three ships, tug, tow, and third ship, were in fault for a collision between tug and third ship, judgment went against tug and tow, jointly and severally, for half the loss (*h*). So in America, where tug and tow are both in fault for damage to the tow by breach of the towage contract, whether by collision (*i*) or not (*k*), the rule of division of loss is applied.

Tow in collision after being cast off by tug.

A tug in a gale being over-run by her tow, cast her off. The tow afterwards came into collision with a lightship, for which, in an action by the owners of the latter, she was held

(*d*) *The Harvest Home*, (1905) P. 177; 10 Asp. 118.

(*e*) *The James Gray* and *The John Fraser*, 21 How. 184. In *The Energy*, L. R. 3 A. & E. 48, this point was not considered.

(*f*) *The Charles Allen*, 11 Fed. Rep. 317; *The Atlas*, 3 Otto. 302; *The Franconia*, 16 Fed. Rep. 149; *The Annie Williams*, 20 Fed. Rep. 866; although the fault of one is gross, and of the other slight: *The Franconia*, *supra*.

(*g*) *The Hudson*, 15 Fed. Rep. 162. For other American cases on these points, see *supra*, p. 182.

(*h*) *The Englishman* and *The Australia*, (1894) P. 239; and see *supra*, p. 176, note (*q*), as to this case: *The Avon* and *The Thomas Jolliff*, (1891) P. 7.

(*i*) *The Jonty Jenks*, 54 Fed. Rep. 1021; *The Express*, 52 Fed. Rep. 890.

(*k*) *The William Kraft*, 33 Fed Rep. 847.

in fault. She subsequently sued the tug, alleging that the collision was caused by the effect of the tow ropes, after being cast off, upon her steering. It was held by a Canadian Vice-Admiralty Court that the tug was justified in casting off her tow under the circumstances; it being also found as a fact that the tow was guilty of negligence, and that her steering was not affected by the tow-rope (*l*).

Tug undertaking special duties.

Where the towage contract is not upon the ordinary terms, and the tug undertakes a larger responsibility as to the conduct of the tow than is usual, it may be her duty to act without orders from the tow (*m*).

The facts of *The Tasmania* (*n*) have been already stated. The collision there was between the tug and her tow, and was caused by the fault of the master of the tug, who was the servant of the charterer and not of the owner of the tug. It was held that the tug was not liable *in rem* because the tug-master, the wrong-doer, was not the servant of the owners of the tug, and because the charterers and the tug were by the terms of the towage contract protected from liability for negligence of the tug-master.

Tug injured by negligence of another tug towing same ship.

In an unreported case a tug, A., towing a vessel, B., was struck and injured by the tow-rope of another tug, C., which was ahead of A., and also towing B. It was held that the damage was caused by the fault of C. in having too long a scope of tow-line out, and also by the fault of A. in not keeping clear of the tow-line (*o*). The rule of division of loss appears to have been applied.

Recovery by tug against tow.

For injury the tug receives herself, or for damages which she is compelled to pay in respect of a collision between herself and a third ship, she cannot recover against the tow, unless the collision was caused by improper orders, or otherwise by the negligence of the tow. Where she could herself have avoided the collision, had she exercised ordinary care, she clearly could not recover against the tow merely on the ground that the latter gave no orders (*p*). For we have seen that under certain circumstances it is her duty to

(*l*) *The Loyal* v. *The Challenger*, 14 Quebec L. R. 135.
(*m*) See *The Isea*, 12 P. D. 34.
(*n*) 13 P. D. 110.
(*o*) *The Digby Grand*, Ad. Ct. 30th April, 1884.
(*p*) See *The Sinquasi*, 5 P. D. 241.

keep clear of other ships without waiting for orders from the tow.

Limitation of tug-owner's liability.

The liability of the owner of the tug for damage done to the tow, by improper navigation of the tug in the performance of the towage contract, is limited by the statute in this as in other cases of collision (*q*).

Owners of a salvor tug and the salved ship are liable for collision between salved ship and salvor

The owners of a ship that takes another in tow are not the less liable for a collision between the two ships, caused by the negligence of the towing-ship, because she is engaged as a salvor or quasi-salvor. The steamship *Thetis* fell in with *The Sardis* in a disabled state. The master of *The Thetis* agreed to tow the latter to port. He had received no instructions from his owner as to offering towage or salvage service to other ships, but the policy of insurance effected upon *The Thetis*, and her bills of lading, contained provisions as to her performing such services. In attempting to take *The Sardis* in tow *The Thetis* negligently ran into and sank her. It was held that the master of *The Thetis* was acting within the scope of his employment in undertaking to tow *The Sardis*, and her owners were held liable for the collision (*r*).

Doctrine of common employment does not apply as between tug and servants of owners of tow.

In one case it was contended that, the tug being the servant of the tow, the doctrine of common employment (*s*) applied, as between the tug and the servants of the owners of the tow, so as to prevent the owners of the tug recovering against the tow and her owners damages for a collision between tug and tow caused by the fault of the tow. This argument did not succeed (*t*).

Improper number of ships in tow.

For a collision caused by the fault of the tug in taking an improper number of vessels in tow either between the vessels in tow, or between one of them and a stranger, the owners of the tug would *primâ facie* be liable to the owners of the tow upon the towage contract (*u*). It is not unusual for tug-owners to relieve themselves from this liability by expressly contracting that they shall not be answerable for the negligence of their servants on board the tug (*x*).

(*q*) *Wahlberg* v. *Young*, 45 L. J. C. P. 783.

(*r*) *The Thetis*, L. R. 2 A. & E. 365.

(*s*) *Priestly* v. *Fowler*, 3 M. & W. 1.

(*t*) *The Jalia*, Lush. 224.

(*u*) See *The United Service*, 8 P. D. 56; 9 P. D. 3.

(*x*) *The United Service*, ubi supra.

The mere fact that one of the vessels in tow strikes and damages another vessel in tow, raises no presumption of negligence on her part. It was so held where the leading vessel in tow took the ground, and the following vessel ran into her (*y*).

With whom the command rests where more than one vessel is in tow.

Where two or more ships are in tow of the same tug, and no agreement has been come to between them and the tug as to which ship is to have the command, it has not been decided with whom the command rests (*z*). Where the craft in tow are barges, it would probably be held to be in the tug (*a*); and the fact that the craft in tow are vessels capable of independent movement, when not in tow, would seem to be immaterial. Three schooners were in tow of a tug with their mainsails set. A squall struck them, and a collision followed between the first and third schooner (which had been cast off by the second). It was held that the third was not in fault (*b*). In America, the tug, being responsible for the proper making up of the tow, is liable for a collision between two of the vessels in tow caused by the bad steering qualities of one that is put astern of the other with which she is in collision (*c*). But it has been held in such a case that one of the ships in tow could not recover against the tug for damage caused by being under weigh in a thick fog when they ought all to have brought up. It was assumed by the Court that it was the duty of the ship in tow to give the order to bring up (*d*). Where two vessels were in tow of the same tug, without objection on the part of that one of them which was nearest the tug, and this vessel took the ground and was run into by the other astern, it was held that she could not recover against the vessel that ran into her (*e*).

In a Canadian case (*f*) a sailing ship in tow with her sail set was held in fault for a collision with an overtaking and passing steamship, against which she was driven by

(*y*) See *Harris* v. *Anderson*, 14 C. B. N. S. 499.

(*z*) *The Gipsy King*, 5 Not. of Cas. 282.

(*a*) See *The Quickstep*, 15 P. D. 196.

(*b*) *Law* v. *Baker*, 26 Fed. Rep. 164.

(*c*) *Orhanovich* v. *The America*, 4 Fed. Rep. 337.

(*d*) *Smith* v. *St. Lawrence Tow Boat Co.*, L. R. 5 P. C. 308.

(*e*) *Harris* v. *Anderson*, 14 C. B. N. S. 499.

(*f*) *The Farewell*, 8 Quebec L. R. 87.

another ship in tow of the same tug striking her on her quarter.

Admiralty jurisdiction in case of negligent towage.

The tug can be sued *in rem* for damage to the ship in tow received in a collision caused by negligent towage, whether such damage is sustained by the tow in a collision with a third ship or with the tug (*g*). And the tug may be sued in Admiralty for damages which the tow has been compelled to pay to a third ship for a collision caused by the fault of the tug (*h*).

Third-party procedure.

Attempts have been made to try the question between tug and tow, as to the ultimate liability for collision with a third ship by means of the third-party procedure under the Judicature Act. The existing rules do not enable a third party to be brought in for such a purpose (*i*).

Where the liability is reasonably in doubt, tug and tow may properly be made co-defendants (*k*).

(*g*) *The Nightwatch*, Lush. 542; *The Julia*, *ibid.* 224.

(*h*) *The Energy*, L. R. 3 A. & E. 48. It seems that the Admiralty Court has jurisdiction in a claim for damage caused by negligent towage, whether such damage is received in a collision or not: see *supra*, p. 27, note (*b*). The Admiralty jurisdiction of the United States Courts includes all claims arising out of towage contracts: 2 Parsons on Ship. (ed. 1869), 176, 188; *The Webb*, 14 Wall. 406.

(*i*) See *infra*, p. 297. As to the practice in America, see *The Hudson*, 15 Fed. Rep. 162.

(*k*) *The River Lagan*, 6 Asp. M. C. 281. Cf. *The Mystery*, (1902) P. 115.

CHAPTER IX.

FOREIGN SHIPS—FOREIGN LAW—FOREIGN JUDGMENTS.

Law applicable to foreign ships; collision in foreign waters.

In collision cases where one or both the ships are foreign, questions frequently arise as to the law applicable to the case, and particularly as to the application of British statutes to foreign ships. The general rule is that municipal laws are binding upon the subjects of the state by which they are enacted everywhere, but upon foreigners only when they are within its jurisdiction (*a*). The principle which governs questions of jurisdiction, and remedies, has been thus stated: "In regard to the merits and rights involved in actions, the law of the place where they originated is to govern . . . but the forms of remedies and the order of judicial proceedings are to be according to the law of the place where the action is instituted, without any regard to the domicil of the parties, the origin of the right, or the country of the act" (*b*).

Before the passing of 25 & 26 Vict. c. 63, foreign laws, and the general maritime law, touching the steps to be taken to avoid collision, and the extent of the shipowner's liability, differed from the law of this country, and questions of difficulty arose in the case of collisions where one or both ships were foreign as to the law applicable to the case. By the Act above mentioned it is provided, with reference to the rule of the road and the extent of shipowner's liability, that in the Courts of this country foreign ships shall be judged by the British law. There are, however, several points upon which

(*a*) As to the limits of British jurisdiction, see *The Saxonia* and *The Eclipse*, Lush. 410; *The Annapolis* and *The Johanna Stoll*, Lush. 295; *Regina* v. *Keyn*, *The Franconia*, 2 Ex. D. 63; of Admiralty jurisdiction, *infra*, p. 200.

(*b*) Story's Conflict of Laws, Ch. 14, § 558, 7th ed. p. 702. And see *Don* v. *Lippman*, 5 Cl. & Fin. 1. So a foreigner in France suing for a collision is subject to the disabilities (*fin de non recevoir*) of the Code de Commerce, Arts. 435, 436; Abordage Nautique, Caumont, §§ 82, 83.

the decisions above referred to (*c*) are material, and as to which there is some doubt whether British or foreign law is to prevail. As stated above, the general rule—where the matter is not expressly provided for by statute—is, that as to rights and merits the law of the place of collision (*lex loci*), and as to remedies and procedure the law of the tribunal (*lex fori*), is to prevail. The form in which the question may arise at the present day is indicated below.

Jurisdiction of Admiralty Courts where both the ships are foreign.

Actions for collision are said to be *communis juris*, and the Admiralty Court never refused to entertain an action merely because both ships were foreign (*d*), or their owners not British subjects (*e*), or because the collision occurred in foreign waters (*f*).

Limits of Admiralty jurisdiction.

The original jurisdiction of the Admiralty probably extended over all waters where the tide ebbs and flows and where great ships are accustomed to go (*g*); but after the enactment of 13 Ric. 2, st. 1, c. 5, and 15 Ric. 2, c. 3, and until the modern statutes enlarging the jurisdiction of the Admiralty Court (*h*), the Court was liable to be restrained by prohibition from exercising its jurisdiction if the collision occurred in the body of a county (*i*). Where not prohibited

(*c*) See *infra*, p. 206, as to these cases.

(*d*) *The Johann Friedrich*, 1 W. Rob. 35; *The Charkieh*, L. R. 4 A. & E. 120. And see *The Evangelistria*, 25 W. R. 255 (ownership of a foreign vessel); *In re Smith*, 1 P. D. 300; *The Griefswald*, Swab. 430; *The Vivar*, 2 P. D. 29. And *per* Story, J., *The Invincible*, 2 Gall. 29; *The Anna Johnson*, 2 Stuart's V. Ad. Rep. (Canada) 43.

(*e*) In *The Courier*, Lush. 541, neither of the ships was owned by British subjects, and the collision was in foreign waters.

(*f*) In *The Diana*, Lush. 539, decided since 24 Vict. c. 10, the ships were owned by British subjects, and the collision was in foreign inland waters.

(*g*) See *per* Blackburn, J., *Reg.* v. *Anderson*, L. R. 1 C. C. R. 161; *Reg.* v. *Carr*, 10 Q. B. D. 76.

(*h*) 3 & 4 Vict. c. 65; 24 Vict. c. 10.

(*i*) *Martin* v. *Green*, *The Dolphin* and *The Barbados Merchant*, 1 Keb. 730, prohibition to the Delegates (1661), Ad. Ct. Rec. Miscell. Bdles., Ser. IV. bdle. 17; *Violet* v. *Blagu*, Cro. Jac. 514; *Violet* c. *Blake*, Ad. Ct. Rec. Libels, File 78, No. 18; File 79, No. 100, was a suit for detinue of a ship in the Thames. The case referred to in the report in Cro. Jac. 514, as of a collision at Blackwall, was probably either *Hall* c. *Cook*, Ad. Ct. Libels, File 78, No. 72, or *Goodyne* c. *Tompkins*, *ibid.* Miscell. Bundle, 250. In *Velthasen* v. *Ormsley*, 3 T. R. 315, where the collision was in the Thames, Lord Kenyon granted a prohibition, although the owner of the ship sued was unknown and there was no remedy at common law, refusing to follow *Wharton* v. *Pits*, 1 Salk. 548. So, in *Dorrington's Case*, Moore, 916. *The Charming Nancy* and *The Dawkins* (1771), Inst. Pap. 51. *The Smyrna* and *The Venus Maria* (1801), Inst. Pap. 92; *Twyneham* v. *Harvest* (1762), Marsden, Ad. Cas. 130, all collisions in the Thames, and in *Elwill* v. *Wiggett* (1664), collision in

the Admiralty Court appears to have exercised the jurisdiction even where the collision was in the body of a county, at least where the ship sued was foreign, and the plaintiff would otherwise be without a remedy (*k*). At the present day there is no doubt that the Admiralty Division has jurisdiction, and will exercise it, whether the collision occurs within the ebb and flow of the tide or not, and whether in British or foreign waters or on the high seas (*l*). The liability of a foreign ship that has injured property of a British subject in any part of the world to be detained until satisfaction is made to the sufferer is referred to below (*m*).

It has been held (*n*) that a County Court has Admiralty jurisdiction in respect of damages by a collision which occurred in a dock connected with a tidal river (the Thames) by a lock. And it seems that the Admiralty Division of the High Court also has jurisdiction in such a case (*o*). Dr. Lushington exercised the jurisdiction in the case of a collision in foreign inland waters—the Great North of Holland Canal (*p*).

Jurisdiction at common law when the collision is abroad.

The common law Courts have jurisdiction, whether the ships are British or foreign, and whether the collision occurs in foreign waters, or elsewhere. "The right of all persons, whether British subjects or aliens, to sue in the English Courts for damages in respect of torts committed in foreign countries, has long since been established; and, as is observed in the note to *Mostyn* v. *Fabrigas* (*q*), there seems to be no reason why aliens should not sue in England for personal injuries done to them by other aliens abroad, when such injuries are actionable both by the law of England, and also by that of the country where they are committed: and the

Weymouth harbour, the Admiralty was prohibited; and later in *The Public Opinion*, 2 Hag. 398; *The Eliza Jane*, 3 Hag. 335; *The Lord of the Isles*, cited in *The Public Opinion*, 2 Hag. 398, 402.

(*k*) *Fairless* v. *Thorsen*, *The Good Intent* and *The Prince Christian*, Marsden's Ad. Cas. 130. As to Admiralty jurisdiction generally, see *De Lovio* v. *Boit*, 2 Gall. 398; *The Volant*, 1 Not. of Cas. 503, 509. As to Canadian inland waters, see 40 Vict. c. 21 (Canada); *The Pieton*, 4 Duval's (Canada) Rep. 648.

(*l*) *The Diana*, Lush. 539 (collision in the Great North of Holland Canal); *The Courier*, Lush. 541; *The Mali Ivo*, L. R. 2 A. & E. 356; as to colonial waters, see *The Peerless*, Lush. 30; as to county court jurisdiction in case of a collision in a London dock, see *Reg.* v. *Judge of City of London Court*, 8 Q. B. D. 609.

(*m*) *Infra*, p. 200.

(*n*) *Reg.* v. *Judge of City of London Court*, 8 Q. B. D. 609.

(*o*) Under 24 Vict. c. 10, s. 7.

(*p*) *The Diana*, Lush. 539.

(*q*) 1 Smith's L. C. 11th ed. 591.

impression which had prevailed to the contrary seems erroneous" (*r*).

Liability of owners resident abroad.

Neither in the Admiralty, nor in the King's Bench Division, can a personal action for damages in respect of a collision occurring below low-water mark of the coasts of the United Kingdom be brought against a person not domiciled or ordinarily resident within the jurisdiction, unless the writ of summons can be served within the jurisdiction (*s*).

Detention of foreign ship that has injured property of a British subject.

A foreign ship that has injured a British ship or property of a British subject in any part of the world may be detained if found within three miles of the coasts of the United Kingdom so as to compel her owners to abide the event of any action in the courts of this country for damage caused by her (*t*). And it seems that in such a case she is liable in an action *in rem* (*u*). But the ship cannot under this Act be detained in respect of personal injury (*x*); and it has been doubted whether she could be seized whilst passing the coasts of this country on a foreign voyage (*y*).

Action in this country for damage to pier abroad.

The question whether an action can be maintained in any Court in this country for a wrongful act to a pier or breakwater forming part of the soil of a foreign country has not been decided. It arose in *The M. Moxham* (*z*), but by consent of the parties, no objection to the jurisdiction was taken. James and Mellish, L. JJ., appear to have had doubts as to the jurisdiction (*z*).

Law of negligence and of liability for negligence applicable to foreign ships.

Before the enactment of the existing International Regulations for Preventing Collisions at sea, the question of negligence in all cases of collision was tried by the general maritime law: in other words, by those rules of seamanship, which, it was assumed, were common to seamen of all nations (*a*). Thus the rule that a vessel on the port tack should bear up for another on the starboard tack was applied

(*r*) *Per* Selwyn, L. J., *The Halley*, L. R. 2 P. C. 193, 202, 203. And see *per* Brett, M. R., 10 Q. B. D. 537.

(*s*) See below, p. 285.

(*t*) 57 & 58 Vict. c. 60, s. 688. *The Christiana*, 2 Hag. 183, is a decision under the similar Act, 1 & 2 Geo. 4, c. 75. In America any property of the owners of the ship sued which is found within the jurisdiction may be seized: 2 Parsons on Ship. (ed. 1869), 390.

(*u*) *The Bilbao*, Lush. 149.

(*x*) *Harris* v. *Owners of the Franconia*, 2 C. P. D. 173.

(*y*) See *per* Cockburn, C. J., *Reg.* v. *Keyn*, 2 Ex. D. 63, 218.

(*z*) 1 P. D. 107.

(*a*) See *The Dumfries*, Swab. 63, 125.

to all ships whether British or foreign. And at the present day, so far as the Regulations do not extend, or where they are not applicable, the test of negligence is the same; namely, the general practice of seamen, or, as it is sometimes called, the general maritime law.

Liability for negligence by maritime law.

The law applicable in this country to cases of collision on the high seas, where one or both ships are foreign, is the maritime law as administered in England, and not the law of the flags (*b*). By that law the shipowner is liable for the negligence of the master and crew of his ship (*c*). And it appears that the liability is the same whether the action is in a court having Admiralty jurisdiction or not (*d*). In the courts of this country, the rights and duties of persons navigating vessels, whether in British territorial waters or on the high seas, are the same. It is their duty so to exercise their right as to do no damage to the property of others (*e*). Thus an English telegraph company sued and recovered damages against the owners of a foreign vessel for injury done to the company's cable, which lay at the bottom of the sea, by the ship's anchor (*f*).

In the case of *The Leon* (*g*), in an action *in personam* in the Admiralty Division by the owners of a British ship against the owners resident in England of a Spanish ship for damages in respect of a collision between the two ships on the high seas, it was pleaded that the negligence on the part of the Spanish ship (if any) was negligence of the master or crew, for which, by the law of Spain, the master or crew, and not

(*b*) *The Johann Friedrich*, 1 W. Rob. 35; *The Dundee*, 1 Hag. Ad. 120; *The Leon*, 6 P. D. 148; *The Milan*, Lush. 388; Foote's Priv. Internat. Law, pp. 308—403. And see *per* Lindley, L. J., *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.*, 10 Q. B. D. 521, 545.

(*c*) *Per* Brett, M. R., 10 Q. B. D. 537; Coke's Inst. 4th Pt. fo. 146. *Semble*, only where the master and crew are his agents. It may be noted that the form of sentence by which, according to the ancient practice of the Admiralty Court, the owners intervening for their interest in an action *in rem* were condemned in damages, was, that the collision having been caused by the fault or negligence of the master and crew of the ship sued, her owners, therefore, were liable. There is no reference in the sentence to the liability of the owners or of the ship being founded upon the fact of the crew being the agents of the shipowner. See, however, *Waltham* v. *Mulgar*, Moo. 776.

(*d*) *Per* Brett, M. R., 10 Q. B. D. 537; Coke's Inst. 4th Pt. fo. 146.

(*e*) *Per* Willes, J., *Submarine Telegraph Co.* v. *Dickson*, 15 C. B. N. S. 759, 779.

(*f*) *Submarine Telegraph Co.* v. *Dickson*, *ubi supra*.

(*g*) 6 P. D. 148.

the shipowners, were liable. It was held by Sir R. Phillimore that by the general maritime law, and by the law of England as administered in Admiralty, the defendants, the foreign owners, were liable.

Again, in a case before the Court of Appeal, an English company, registered under the Companies Act, 1862, were sued in tort by the owners of cargo on board a vessel that was sunk in a collision caused partly by the fault of the defendants' ship, which had a foreign register and sailed under the foreign flag (*h*). The defendants admitting that they represented the foreign owners for the purposes of the action, it was held that they were liable. And it was said that even without the admission the decision would probably have been the same, the foreign owners being bare trustees for the defendants (*i*).

In an action in a common law court by the owners of a British ship against a French subject for a collision with a French ship on the high seas, it was pleaded that the injury complained of happened out of British jurisdiction, and that it was not committed by the defendant personally, but by the master of the French ship; that the defendant was a French subject; that by the law of France he was not liable for the acts of the master; and that by the same law a French corporation, who were the proprietors of the ship, and the master's employers, were alone liable. The plea was held good (*k*).

Application of foreign law as to liability for negligence.

The liability depends, in some cases, upon the law of the place where the collision occurs, and of the country to which the ship belongs. If it occurs in the territorial waters of a country by the law of which an owner is not liable for the wrongful acts of his officers or crew, it seems that he would not be liable in the courts of this country (*l*). For the question whether a particular person is liable for an act which is wrongful by the law of the place where it is committed depends on the substantive law of the country where the act

(*h*) To enable her to trade with the Dutch East Indies she was registered in Holland in the name of a Dutch company, the members of which were the same as those of the English company.

(*i*) *Chartered Mercantile Bank of India, &c.* v. *Netherlands India Steam Navigation Co.*, 10 Q. B. D. 521, 545.

(*k*) *General Steam Navigation Co* v. *Gillou*, 11 M. & W. 877, 895.

(*l*) See *per* Brett, M. R., *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.*, 10 Q. B. D. 521, 536.

is done (*m*). In such a case, therefore, it is the *lex loci* and not the *lex fori* which governs. Nor is the defendant liable, in this country, for a collision in a foreign country unless the negligence causing the collision is that of a person for whose acts he is responsible by the law of England. "No action can be maintained in the courts of this country on account of a wrongful act either to a person or to personal property committed within the jurisdiction of a foreign country, unless the act is wrongful by the law of the country where it is committed, and also by the law of this country" (*n*).

In *The M. Moxham* an English company, possessed of a pier in Spain, instituted an action in the Admiralty Court against a British ship for negligently injuring the pier. The shipowners, by their answer, pleaded that by the law of Spain they were not liable for the negligence of the crew in the navigation of the ship. The Court of Appeal held that, assuming the Court had jurisdiction, the law of Spain was applicable, and that the plea was good (*o*).

So if the collision occurs in foreign waters by the fault of a pilot, the employment of whom is compulsory by the foreign law, the owners will not be liable in the courts of this country; and they are not liable here, although by the law of the place of collision they would be liable in the foreign court (*p*).

Order of claims against a ship is *lex fori*.

It has been held, where there are several claims against a ship, that they must rank and be paid according to British law, the matter being governed by the *lex fori* (*q*).

Rule of the road for foreign ships.

The statutory rules as to steps to be taken to avoid collision, which were contained in the Merchant Shipping and other Acts previous to 25 & 26 Vict. c. 63, were held not to apply in the case of a collision between two foreign ships, or a British and a foreign ship, on the high seas. The question of negligence in such cases was tried by the general maritime law, under which the steps required to be taken to avoid collision were not always identical with those required by the

(*m*) *Per* Mellish, L. J., *The M. Moxham*, 1 P. D. 107, 113.

(*n*) *Per* Mellish, L. J., in *The M. Moxham*, 1 P. D. 107, 111. And see *per* Lord Blackburn, *The Vera Cruz*, 10 App. Cas. 59, 72; *Carr* v. *Fracis Times & Co.*, (1902) App. Cas. 176.

(*o*) *The M. Moxham*, 1 P. D. 107.

(*p*) *The Halley*, L. R. 2 P. C. 193. And see *The Guy Mannering*, 7 P. D. 52, 132; *The Augusta*, 6 Asp. M. C. 58, 161.

(*q*) *The Union*, Lush. 128.

British statute. A ship, therefore, meeting another on the high seas, had to obey one rule, if both ships were British, and another, and a different rule, if one were not British (*r*). This state of things, which could not fail to be productive of collisions, led to the adoption of the existing International Regulations (*s*). No question as to the rule of the road, or as to the law applicable to the particular case, such as arose in the cases decided under former Acts, can now be raised. All maritime nations having adopted the regulations, and the Courts of this country being required by the municipal law to apply the regulations to the ships of all nations that have adopted them, the rule of the road is the same for all ships, and is recognized alike by international, municipal, and maritime law (*t*).

Application of British local regulations to foreign ships.

Foreign ships, equally with British ships, are bound to know and observe local regulations for preventing collisions in force in various rivers and harbours of this country (*u*).

Application of foreign local regulations to British ships.

Foreign municipal regulations as to ships' lights, and rules to be observed in navigating foreign waters, though they have not in the courts of this country the force of law, may, as evidence of negligence, be of importance in determining the liability for a collision in such waters. The effect of special regulations made by the Government of this or a foreign country for its ships of war and for ships under convoy is expressly saved by the regulations (*x*).

Application to foreign ships of rule as to presumption of fault.

The law by which the owners of a ship that has been in collision are, upon proof of certain circumstances as to infringement of the regulations, or as to not assisting the other ship, made liable for the collision, without proof of actual negligence upon the part of their ship, has been considered in a former chapter (*y*). There seems to be no doubt that

(*r*) *The Dumfries*, Swab. 63; *The Saxonia* and *The Eclipse*, Lush. 410; *The Zollverein*, Swab. 96; *The Elizabeth*, 3 L. T. 159. The general maritime law was deemed to have embodied the "port tack" rule — that a sailing ship on the port tack should give way to another on the starboard tack. See *The Dumfries*, *ubi supra*.

(*s*) As to the circumstances under which these regulations were promulgated, see *infra*, p. 314.

(*t*) The exception formerly existing with regard to fishing vessels' lights (as to which see *infra*, p. 353 is no longer operative.

(*u*) 57 & 58 Vict. c. 60, ss. 418 (2), 424 (2). See *The Lyemoor*, Swab. 374; *The Seine*, *ibid.* 414, as to the law on this subject under the M. S. Act, 1854.

(*x*) Art. 13, *infra*, p. 365.

(*y*) *Supra*, pp. 39 *seq.*

these enactments apply to foreign ships (*z*), and in all waters, whether British, foreign, or on the high seas. The enactment as to infringement of the regulations has been assumed to apply to a British and foreign ship in collision in British waters and also on the high seas (*a*); and, apart from the express provision of 57 & 58 Vict. c. 60, s. 424, both enactments would probably be held to be rules of evidence, or otherwise applicable to foreign ships as *lex fori* (*b*).

Defence of "compulsory pilotage" available for foreign ships.

The defence of compulsory pilotage is available for a foreign as well as for a British ship. The statutory exemption of owners from liability for damage done by a ship when in charge of a compulsory pilot probably applies to foreign ships (*c*); and, independently of the statute, foreign as well as British owners are not liable for the acts of a person placed in charge of their ship by the state (*d*).

(*z*) *Supra*, p. 59.

(*a*) *The Englishman*, 3 P. D. 18; *The Voorwaarts* and *The Khedive*, 7 App. Cas. 795; *The Vera Cruz* (No. 1), 9 P. D. 88. See also *The British Princess* and *The Sdmi Dubrovacki*, Ad. Ct. March 11—14th, 1878, Mitch. Mar. Reg.; *The Magdeburgh* and *The Henry Willard* (American), Ad. Div. 16th Jan. 1885; *The Love Bird*, 6 P. D. 80.

(*b*) It was held by Dr. Lushington in *The Zollverein*, Swab. 96, that sect. 298 of 17 & 18 Vict. c. 104, was a *lex fori* relating to remedies. In that case the section was held not to apply in the case of a collision between a British and a foreign ship on the high seas so as to prevent the British ship from recovering against the foreigner. The ground of the decision was that the previous section (sect. 296), containing the rule of the road, was a municipal law not applicable to foreign ships on the high seas, and that therefore sect. 298, which depended on sect. 296, had no application to the foreign ship. Since, therefore, the foreigner was not prevented by sect. 298 from recovering against a British ship that to which by the maritime law he would be entitled, it was held to be unfair to allow the foreigner to avail himself of a breach by the British ship of the municipal law as a defence. The existing regulations being international, it is submitted that the decision in *The Zollverein*, as to the application of sect. 298 of the Act of 1854, affords no ground for contending that 57 & 58 Vict. c. 60, s. 419 (4), does not apply to foreign ships. In *The Nevada*, 1 Asp. M. C. 477, however, the Vice-Admiralty Court of N. S. Wales held that sect. 33 of the Act of 1862 did not apply to an American ship. In *The Germania*, 21 L. T. 44, sect. 29 of 25 & 26 Vict. c. 63, was applied to a foreign ship; but Lord Romilly appears to have considered that sect. 33 of that Act (as to "standing by") applied only to British ships. In *The Thuringia*, 1 Asp. M. C. 283, nothing was said as to the application of that section to a foreign ship on the high seas. As to the effect of sects. 57 and 58 of the same Act, see the observations of Lord Chelmsford in *The Amalia*, 1 Moo. P. C. N. S. 471, 485. See further as to these enactments, *infra*, pp. 316 *seq.*

(*c*) As did the former Pilotage Act, 6 Geo. 4, c. 125, s. 55. See *The Christiana*, 2 Hag. 183.

(*d*) 17 & 18 Vict. c. 104, s. 388; *The Maria*, 1 W. Rob. 95, 106. In *The Girolamo*, 3 Hag. Ad. 169, and other cases under 6 Geo. 4, c. 125, it was held that the statutory exemption of owners from liability for the fault of a compulsory pilot did not apply so as to exempt the owners of a foreign ship in proceedings *in rem*.

The employment of a pilot may, by statute, be made compulsory on a foreign ship visiting this country, even where she is beyond three miles from the shores of the United Kingdom (*e*).

Compulsory pilotage abroad.

The owners of a British ship, which had been in collision with a foreign ship in the Scheldt, were sued by the foreign ship in this country. The British ship alleged that the collision was caused entirely by the negligence of the pilot, whom, by the Belgian law in force in the Scheldt, she was compelled to take. By the Belgian law owners are liable for the acts of a compulsory pilot. It was held by the Privy Council (reversing the decision of Court below) that the Belgian law, which imposed a liability upon owners to which they were not subject, either by the law of this country or by any principle of justice, had no application, and that the British owners were not liable (*f*).

Statutory limitation of liability applies to foreign ships.

In a former chapter it has been stated that the common law right of a sufferer by collision to obtain from the wrong-doer a full recompense has, from time to time, been considerably modified by British statutes. Until the passing of 25 & 26 Vict. c. 63, which preceded the present Act, there was frequently great difficulty, in cases where one or both the ships in collision were foreign, in determining whether the municipal law limiting owners' liability was, or was not, applicable (*g*). At the present day no such difficulty can arise. Whether the ships are both British, or both foreign, or one British and one

In *The Vernon*, 1 W. Rob. 316, Dr. Lushington appears to have considered that the statutory exemption of owners was *lex fori*.

(*e*) *The Annapolis* and *The Johanna Stoll*, Lush. 295. But see 41 & 42 Vict. c. 73.

(*f*) *The Halley*, L. R. 2 P. C. 193; in the Court below, *ibid.* 2 A. & E. 3. In this case it seems to have been wrongly assumed that the pilot was in charge of the ship; this is not always so abroad. See *infra*, p. 218.

(*g*) The provisions of the Merchant Shipping Act, 1854, did not, in terms, apply to foreigners. Under this Act it was held that the liability of the owners of a British ship in collision with a foreigner, within three miles of the shores of the United Kingdom, was limited: *General Iron Screw Collier Co.* v. *Schurmanns*, 1 J. & H. 180; but see *The Saxonia*, Lush. 410, where this case was questioned; that the liability of the owners of two foreign ships in collision on the high seas, beyond that distance from the United Kingdom, was unlimited: *Cope* v. *Doherty*, 1 K. & J. 367; on app. 2 De G. & J. 614; and that the liability of the owners of a foreign ship in collision with a British ship, beyond the three-mile limit, was unlimited: *The Wild Ranger*, Lush. 553; even although the foreign ship's liability by the municipal law of her own state were the same as that of the British ship by British law: *The Wild Ranger*, *ubi supra*.

foreign, and whether the collision occurs in British waters or on the high seas, the limit of owners' liability is the same, namely, that fixed by 57 & 58 Vict. c. 60, s. 503.

In *The Amalia* (*h*) it was held that the liability of the owners of a British ship in collision with a foreign ship on the high seas (in the Mediterranean) is limited by the Act of 1862. It was contended that the Legislature had no power to alter the rights of foreigners in the case of a collision on the high seas, or to limit the amount of the damages to which by the maritime law they were entitled. It was, however, held by the Privy Council (affirming the decision of Dr. Lushington) that there is no breach of international law in such legislation; and it was said by Lord Chelmsford, in the course of the judgment, and the decision in the case went upon the principle, that the owners of a foreign ship in a similar case would be entitled to the benefit of the Act, by which in all cases the liability of the owners of a foreign ship is limited in the same way, and to the same extent, as that of owners of a British ship (*i*).

Rule as to division of loss applies to foreign ships.

The rule as to division of loss where both ships are in fault for a collision appears to have been applied as part of the law maritime to all collisions, whether in British or foreign waters or on the high seas, and whether the ships were both British, or both foreign, or one British and one foreign. And the Judicature Act, 36 & 37 Vict. c. 66, extending its operation to the Courts other than those having Admiralty jurisdiction, appears to have an equally wide operation (*k*).

And the rule has been applied in a case of collision between two ships belonging to the same owners, as between a foreign cargo-owner suing the British owners of a ship sailing under a foreign flag for loss of cargo in a collision caused by the fault both of the carrying ship and of the other ship (*l*).

(*h*) Br. & Lush. 151; 1 Moo. P. C. N. S. 471.

(*i*) It seems that the law limiting owners' liability is not *lex fori*. Such was the opinion of Wood, V.-C., in *Cope* v. *Doherty*, 4 K. & J. 367, 384; and in *The General Iron Screw Collier Co.* v. *Schurmanns*, 1 J. & H. 180, 197. In *The Amalia* the Privy Council expressed no opinion upon the point, but Dr. Lushington (Lush. p. 153) was of the same opinion as Wood, V.-C., in the cases above mentioned. Cf. also *per* Lord Stowell in *The Carl Johan*, mentioned in *The Girolamo*, 3 Hag. Ad. 169, 186. See *supra*, p. 206.

(*k*) See *supra*, p. 123.

(*l*) *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.*, 10 Q. B. D. 521.

Arrest of ship of a foreign sovereign.

It is a principle of international law that a sovereign prince or state cannot be sued in a foreign court, and, on the same principle, proceedings *in rem* cannot be taken against the public ship of a foreign sovereign (*m*). But it has been said (*obiter*) by Sir R. Phillimore that if a ship of a foreign sovereign engages in trade she is liable to arrest, and the sovereign must be taken to have waived the privilege of immunity from arrest which attaches to a public ship of a foreign state (*n*). It has also been held that it is not in the power of the Crown, without the consent of Parliament, to exempt from liability to arrest the trading ship of a foreign sovereign (*o*).

A frigate of the United States was stranded on the south coast of England and received salvage services from an English tug. She had on board, under an Act of Congress and for public purposes, cargo owned by American citizens. The tug-owner sought to arrest the frigate and her cargo in a claim for salvage. It was held that no warrant for arrest could issue either in respect of ship or cargo (*p*).

The Parlement Belge, a vessel belonging to the King of the Belgians, commanded and manned by officers and men commissioned and paid by him, was engaged in carrying mails in connection with the British Post Office, together with passengers and cargo. On her voyage from Ostend to Dover, when close to Dover pier, she ran into a British ship at anchor. Notwithstanding the fact that a convention had been entered into between her Majesty and the King of the Belgians declaring that the mail boats, of which *The Parlement Belge* was one, should be deemed to be ships of war and should not be liable to arrest, it was held by Sir R. Phillimore that she was liable in proceedings *in rem* at the suit of the owner of the injured vessel. This decision was reversed by the Court of Appeal upon the following grounds: (1) That

(*m*) *The Constitution*, 4 P. D. 39; *The Parlement Belge*, 5 P. D. 197; *The Jassy*, (1906) P. 270, in which case it was held that an undertaking to put in bail given under a misapprehension was not a waiver of the privilege.

(*n*) *The Charkieh*, L. R. 4 A. & E. 59, *supra*; see the observations of the Court of Appeal upon this case, 5 P. D. 217.

(*o*) *The Parlement Belge*, 4 P. D. 129. In the Court of Appeal (5 P. D. 197) this question was not considered.

(*p*) *The Constitution*, 4 P. D. 39.

the person and the property of a foreign sovereign are exempt from the jurisdiction of a British Court upon the same grounds, namely, that the exercise of such jurisdiction is incompatible with the absolute independence of the sovereign of every superior authority; (2) That this principle applies to an Admiralty action *in rem*; (3) That a ship owned and used by a State or sovereign for public purposes is exempt from arrest, whether process *in rem* is considered as a proceeding against the ship or against the shipowner; (4) That in an action *in rem* the shipowner is indirectly impleaded. The question whether the ship was exempt from arrest by virtue of the convention mentioned above was not considered.

Mail Ships Act.

By the Mail Ships Act (*q*) provision has been made to exempt ships carrying mails to or from British colonies and foreign countries from liability to arrest, upon security being given for the payment of damages as mentioned in the Act.

Foreign sovereign suing in British Court must give bail to answer counter-claim.

Where one of the ships in collision is a public ship of a foreign government, and the foreign government sues the other ship in an Admiralty Court of this country, proceedings in the action will be stayed, upon the application of the owners of the defendant ship, until the foreign plaintiffs give bail to answer a counter-claim made by the defendant owners (*r*).

Foreign governments occasionally submit that the question of liability for a collision in which their man-of-war, or other public ship, is involved, shall be determined by the Courts of this country. In such a case the regulations are material upon the question of negligence (*s*), though probably not expressly binding upon such ships (*t*).

Application of Lord Campbell's Act to foreigners and foreign ships.

The representatives of foreigners killed in a collision on the high seas on board a foreign ship can recover damages under Lord Campbell's Act in the Courts of this country (*u*);

(*q*) 54 & 55 Vict. c. 31. The Act has been applied to ships engaged in the mail service with France by Orders in Council of 6th Feb. 1892, 5th Aug. 1892, and 18th May, 1892; with India, Order in Council of 16th May, 1893; with South Australia and Western Australia, Order in Council of 5th Aug. 1892.

(*r*) *The Newbattle*, 10 P. D. 33.

(*s*) See *The Lord Byron*, cited Maude & Pollock on Ship. 4th ed. 607, note (*k*).

(*t*) See Art. 13, *infra*, p. 365.

(*u*) *The Explorer*, L. R. 3 A. & E. 289; followed in *Davidson* v. *Hill*, (1901) 2 K. B. 606. In *Adam* v. *British and Foreign Steamship Co.*, (1898) 2 Q. B. 430, Darling, J., had held the contrary. In *The Vera*

and under the same Act a foreign ship has been made liable, in proceedings *in rem*, for loss of life on the high seas caused by her negligent navigation (*x*). But as regards actions under Lord Campbell's Act, these can only be brought *in personam*, and the Admiralty Division has jurisdiction as a part of the High Court, and not from its original Admiralty jurisdiction (*y*).

Lis alibi pendens in a foreign Court.

If an action *in rem* is pending in a foreign Court in respect of the same collision, the Court has a discretion (*z*) to stay its proceedings or to put the plaintiff to his election whether he will abandon one or other of the actions (*a*); but there will be no stay, where, bail having been given abroad, there has been no arrest of the ship and no legal proceedings abroad (*b*). Where an action by the owners of ship A. against ship B. was pending in a Vice-Admiralty Court abroad, proceedings by the owners of ship B. against ship A. in the English Admiralty were stayed (*c*).

In a case of wilful damage by the master of a foreign ship to another foreign ship in foreign waters, the Admiralty Court refused to entertain the action (*d*).

Res judicata: effect of foreign judgment.

The judgment of a competent foreign Court (and for this purpose Irish, Scotch and Colonial Courts are foreign Courts)

Cruz, 10 App. Cas. 59, the persons killed appear to have been foreigners. In *Kendrick* v. *Burnett*, 25 Ct. of Sess. Cas. 4th ser. 82, the liability for personal injury or death by collision on the high sea was held to be limited to cases where it is created by the laws of the countries of the wrong-doer and of the sufferer. In America no action lies in Admiralty for the death of a person on the high sea: *Rundell* v. *Compagnie Générale Transatlantique*, 100 Fed. Rep. 655; 94 Fed. Rep. 366; *La Bourgoyne*, 117 Fed. Rep. 261; *The Harrisburg*, 119 U. S. Rep. 199; *The Alaska*, 130 U. S. Rep. 201.

(*x*) *The Guldfaxe*, L. R. 2 A. & E. 325. The collision in this case was between a Norwegian vessel and a British fishing lugger. The plaintiffs were the representatives of four of the crew of the lugger, who were British subjects. See note, *The Explorer*, L. R. 3 A. & E. 289, 290.

(*y*) *The Vera Cruz* (No. 2), 9 P. D. 96; affirmed, 10 App. Cas. 59; *The Circe*, (1906) P. 1.

(*z*) As to the validity of the plea of *lis alibi pendens* in a foreign Court, as a defence, see *per* Pollock, C. B., in *Scott* v. *Seymour*, 1 H. & C. 219, 229.

(*a*) See *Mutrie* v. *Bunney*, 35 Ch. D. 614, followed in *The Christiansborg*, 10 P. D. 141; *The Malt Ivo*, L. R. 2 A. & E. 356; *The Catterina Chiazzare*, 1 P. D. 368. See *The Delta*, 1 P. D. 393, 404; *The Lanarkshire*, 2 Sp. 189; *Hyman* v. *Helm*, 24 Ch. D. 531; *Mellory* v. *Lewis*, 22 Ch. D. 397; *The Rembeck*, 6 Asp. M. C. 366, as to the circumstances under which an action in England will be restrained.

(*b*) *The Mannheim*, (1897) P. 13.

(*c*) *The Peshawar*, 8 P. D. 32.

(*d*) *The Ida*, Lush. 6. This case was decided before 24 Viet. c. 10, came into force.

delivered before action brought in this country (*e*) upon the merits (*f*) of a collision, given in the presence of both parties, is, if final and conclusive (*g*), a bar to an action in this country between the same parties (*h*) for the same collision (*i*). The Courts of this country will not entertain an action in such a case, although fresh evidence may have been discovered, and although all the facts were not before the foreign tribunal (*k*); nor because the foreign Court was misinformed as to English law (*l*) If the parties are not the same, as where the shipowners sue in one country and the cargo-owners in the other (*m*); or if the foreign tribunal had not jurisdiction (*n*); or if the plaintiffs in this country were not subjects of, nor resident, nor present in the foreign country, and did not as plaintiffs abroad select the foreign tribunal (*o*); or if the foreign judgment went by default (*p*); or was against natural justice, as where the foreign judges were interested parties (*q*); or where the defendant had never been summoned (*r*); or was in defiance of the comity of nations, as where the foreign Court refuses to recognize title acquired by the law of England (*s*); or if the foreign judgment was obtained by fraud (*t*),—it is not a bar to an action in this country, and in an action here the foreign judgment in such

(*e*) *The Delta*, 1 P. D. 393. See *Houstoun* v. *Marquis of Sligo*, 29 Ch. D. 448.

(*f*) *The Delta*, *ubi supra*; *Harris* v. *Quine*, L. R. 4 Q. B. 653.

(*g*) *Henderson* v. *Henderson*, 3 Ha. 100; *Plummer* v. *Woodburn*, 4 B. & C. 625, 637; *Frayes* v. *Worms*, 10 C. B. N. S. 149; *Nouvion* v. *Freeman*, 15 App. Cas. 1; decision on collateral points not binding: *Concha* v. *Concha*, 11 App. Cas. 541.

(*h*) As to what is a judgment between the same parties, *Arnison* v. *Smith*, 40 Ch. D. 567.

(*i*) See Phillimore's Internat. Law, 2nd ed. IV. 733 *seq.*; Westlake's Priv. Internat. Law, 376; Foote's Priv. Internat. Law, 476; Roscoe, Nisi Prius, 15th ed. 196.

(*k*) *Re Trufort*, *Trafford* v. *Blanc*, 36 Ch. D. 600.

(*l*) *Godard* v. *Gray*, L. R. 6 Q. B. 139.

(*m*) Cf. *The Pennsylvania*, 19 Wall. 125; *The Pennsylvania*, 3 Mar. Law Cas. O. S. 477. As to the effect of a foreign judgment *in rem*, see *Castrique* v. *Imrie*, L. R. 4 H. L. 414.

(*n*) *The Griefswald*, Swab. 430; *Havelock* v. *Rockwood*, 8 T. R. 268.

(*o*) *General Steam Navigation Co.* v. *Gillou*, 11 M. & W. 877, 894. See also *The Griefswald*, *ubi supra*.

(*p*) *The Delta*, *The Erminia Foxolo*, 1 P. D 393.

(*q*) *Price* v. *Dewhurst*, 8 Sim. 279.

(*r*) *Ferguson* v. *Mahon*, 11 Ad. & El. 179; *Buchanan* v. *Rucker*, 9 East, 192; S. C., 1 Campb. 63; *Cavan* v. *Stewart*, 1 Stark. 525.

(*s*) *Simpson* v. *Fogo*, 1 J. & H. 18; 1 H. & M. 195.

(*t*) Foote's Private International Law, 476; *Godard* v. *Gray*, L. R. 6 Q. B. 139; *Abouloff* v. *Oppenheimer*, 10 Q. B. D. 295; *Vadala* v. *Lawes*, 25 Q. B. D. 310.

cases is not admissible in evidence (*u*). A judgment *in personam* is, it seems, a bar to an action by the same plaintiff *in rem* (*x*).

A foreign judgment may be pleaded in bar, so long as it remains unreversed, and notwithstanding that an appeal is pending (*y*).

Foreign judgment *in rem*: whether it can be enforced by arrest of ship here.

The City of Mecca, a British steamship, was in collision on the high seas with a Portuguese ship. *The City of Mecca* was arrested in Portugal and found by the Portuguese Court to be in fault for the collision. Owing to some irregularity in the proceedings she was released from arrest by the Portuguese authorities, and came to England, the foreign judgment remaining unsatisfied. She was arrested in England by the plaintiffs in the Portuguese action; and it was held by Sir R. Phillimore that international comity required that the English Admiralty Court should enforce the decree of the Portuguese Court (*z*). In the Court of Appeal it appeared, for the first time, that the Portuguese action was *in personam* and not *in rem*; and it was held, in consequence, that the foreign judgment, not having created a maritime lien, the vessel had been wrongly arrested in the Admiralty action in this country (*a*).

Criminal liability of foreigner.

The criminal liability in the Courts of this country of a foreigner, in respect of a collision whereby a British subject or a foreigner is killed or injured, is considered in another chapter.

(*u*) *Castrique* v. *Imrie*, L. R. 4 H. L. 414, 427.

(*x*) *The Griefswald*, Swab. 420. But see *infra*, pp. 289, 296.

(*y*) *Castrique* v. *Behrens*, 30 L. J. Q. B. 163; *Munro* v. *Pilkington*, 31 L. J. Q. B. 163.

(*z*) 5 P. D. 28.

(*a*) 6 P. D. 106.

CHAPTER X.

COMPULSORY PILOTAGE.

Pilot voluntarily employed is the owner's servant.

A PILOT whom the owner or master of a ship voluntarily employs to navigate the ship is the servant of the owner for that purpose, and the owner is answerable for a collision caused by his fault or negligence (*a*), and his ship is liable in Admiralty.

Aliter where the pilot is placed in charge by the law.

In some waters and under certain circumstances the law requires a ship to be placed in charge of, and navigated by, a qualified or licensed pilot; and in such cases it is a statutory offence (*b*) on the part of the owner or person in charge of the ship not to take a pilot on board. A pilot taken under these circumstances, called a "compulsory" pilot, is held to be placed in charge of the ship by the law, and to supersede the master in the conduct of the ship so long as she is in pilotage waters. He is not the servant or agent of the owner; and for a collision caused entirely by his negligence neither is the owner answerable at law nor the ship in Admiralty. In such a case the remedy of the injured person is against the pilot alone (*c*).

What constitutes compulsory pilotage.

Pilotage is held to be compulsory, so as to exempt owners from liability for the acts of the pilot, in all British waters, and for all ships, in and for which the employment of the pilot is enforced by penalty (*d*), or where the pilotage charge

(*a*) See *The Maria*, 1 W. Rob. 95, 108; *The Eden*, 2 W. Rob. 442. In early times the pilot appears to have been employed by or with the consent of the merchant, and it is not clear that the shipowner was liable for a collision caused by his fault. In 1643 a collision suit was defended on this ground. See Ad. Ct. Miscell. Books, 280, 13th June, 1643.

(*b*) See note (*d*), *infra*.

(*c*) See *Stort* v. *Clements*, Peake, 107, as to the liability of the pilot. See also *The Octavia Stella*, 6 Asp. M. C. 182, where the damage was occasioned to an oyster bed.

(*d*) Usually double the amount of the pilotage charge, or in some cases a sum not exceeding 100*l.*: 17 & 18 Vict. c. 104, ss. 353, 354. Under 6 Geo. 4, c. 125, s. 59, there was in some cases an additional penalty.

can be recovered against the ship or her owners, whether the pilot is employed or not (*e*).

In some foreign waters pilotage is compulsory in the sense that payment of pilotage charges is compulsory, but the shipowner is nevertheless liable for the pilot's negligence. This difference in the owner's liability, due to the different position and authority of the foreign pilot, is explained below (p. 218).

The pilotage authority is not liable.

Attempts have in some cases been made to recover from the pilotage authority damages for a collision caused by the fault of a licensed pilot, but with little success (*f*). In one (Scotch) case, however, where the circumstances were peculiar, a harbour authority was held liable for the negligence of a person acting as pilot, on the ground that he was their servant. The harbour authority, having power to license pilots under the Merchant Shipping Act, 1854 (ss. 330—388), was held liable for injury to a steamer entering the harbour, caused by the fault of a boatman, not licensed as a pilot, who was acting in charge of the steamer as pilot, and was employed by the defendants, the harbour authority (*g*).

H.M.'s ships not subject to compulsory pilotage.

His Majesty's ships are not subject to compulsory pilotage (*h*).

Owner liable for collision by fault of master holding pilotage certificate.

Masters and mates of certain ships may obtain certificates enabling them to pilot a specified ship or any other ship or ships belonging to the same owner within the waters over which the pilotage authority has jurisdiction (*i*). By the London Trinity House these certificates are granted to masters and mates, enabling them to pilot any ship belonging to the same owner (*k*). For a collision caused by the negligence of a master or mate holding such a certificate the owner is liable.

Owners exempt from

The non-liability of the shipowner for the negligence of a

(*e*) *Carruthers* v. *Sydebotham*, 4 M. & S. 77; *The Maria*, 1 W. Rob. 95, 109; *The Arbutus*, 2 Mar. Law Cas. O. S. 136; *The Hibernian*, L. R. 4 P. C. 511.

(*f*) See *supra*, p. 93.

(*g*) *Holman* v. *Irvine Harbour Trustees*, 4 Sess. Cas. 4th ser. 406.

(*h*) 57 & 58 Vict. c. 60, ss. 603, 741; 6 Geo. 4, c. 125, s. 86.

(*i*) 57 & 58 Vict. c. 60, s. 599. *The Bristol City*, (1902) P. 10, is a decision upon this section. *The Killarney*, Lush. 202; *The Earl of Auckland*, Lush. 164, 387 (upon corresponding sections of 17 & 18 Vict. c. 104).

(*k*) See Order in Council of 16th July, 1857.

liability for fault of compulsory pilot at common law and by statute.

compulsory pilot depends not only upon the common law (*l*); it is further declared by statute. The statute (57 & 58 Vict. c. 60, s. 633) is as follows:—

"An owner of or master of a ship shall not be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of that ship within any district where the employment of such pilot is compulsory by law" (*m*).

Semble, pilot on board tug is not "acting in charge of" the tug.

It appears to have been held by Sir R. Phillimore, in *The Mary* (*n*), that a pilot by compulsion of law in charge of a ship in tow is not acting in charge of the tug within the meaning of this section.

Effect of the statute.

The precise effect of the statute is not clear. Probably it is merely declaratory of the common law (*o*). In *The Maria* (*p*), Dr. Lushington said: "The leading principle of the Legislature in exonerating owners from any liability for damage occasioned by their vessels having pilots on board is this: that the masters are compellable to take pilots on board, and the owners are not responsible for the acts of the persons to whom they are thus forced to commit the management of their property, and over whom they have no control. This, I apprehend, is a rule founded upon a great principle of justice and equity" (*q*).

6 Geo. 4, c. 125.

These remarks were made in a case decided under a previous pilot Act (6 Geo. 4, c. 125, s. 55) now repealed, which was different in terms and in effect from the Act now in force. One difference is pointed out by Lord Romilly, M. R., in *The Lion* (*r*): namely, that the exemption of owners from liability created by the earlier Act extends to

(*l*) *The Maria*, 1 W. Rob. 95; *The Halley*, L. R. 2 P. C. 193; *The Annapolis* and *The Johanna Stoll*, Lush. 295.

(*m*) Reproducing 17 & 18 Vict. c. 104, s. 388. This applies to the United Kingdom only: see s. 572. For previous legislation, see 52 Geo. 3, c. 39, s. 30; *Ritchie* v. *Bowsfield*, 7 Taunt. 309; 6 Geo. 4, c. 125, s. 55. As to "qualified" pilot, see s. 586, and *infra*, p. 225.

(*n*) 5 P. D. 14. But see *The Adam W. Spies*, 70 L. J. Ad. 25. And see *The Clan Gordon*, 7 P. D. 190, *infra*, p. 219, as to the meaning of "any person having the care of any ship" in a local Act.

(*o*) See *per* Brett, M. R., *The Hector*, 8 P. D. 218, 224; *General Steam Navigation Co.* v. *British and Colonial Steam Navigation Co.*, L. R. 4 Ex. 238; *The Charlton*, 8 Asp. M. C. 29.

(*p*) 1 W. Rob. 95, 99.

(*q*) See also the judgment in *The Bilbao*, Lush. 149, 154, to the same effect.

(*r*) L. R. 2 P. C. 525, 533.

cases where a licensed pilot is acting in charge of the ship under the provisions of the Act, whether by compulsion of law or by the shipowner's appointment (*s*); whereas the later statutes apply only where the pilot is in charge by compulsion of law. A further difference between the earlier Act and the existing Act is that under the earlier Acts the exemption was only where the pilot acted "under or in pursuance of" the Act. These words gave rise to questions as to what pilotage districts were referred to (*t*).

Liability of the ship in Admiralty.

For some time after the statutory exemption of shipowners from liability for the fault of a compulsory pilot was introduced, it was doubtful whether the remedy against the ship in Admiralty was taken away (*u*), and conflicting decisions were arrived at. But it has now, for many years, been settled that the ship is not liable in such case.

Foreign ships.

The enactments as to compulsory pilotage are binding upon foreign as well as British ships (*x*).

Compulsory pilot in foreign waters.

The principle of non-liability of owners for a collision caused by the negligence of a compulsory pilot has been applied even in the case of a collision in the territorial waters of a country (*y*) by the law of which owners are expressly made liable for the negligence of a compulsory pilot (*z*). Whether the compulsion is by the law of this country, or by the law of the place where the collision occurs, the owner is, in the courts of this country, equally free from liability (*a*).

Pilotage in the Suez Canal.

In the Suez Canal local regulations having the force of law oblige the shipowner to take on board and pay a charge for a "pilot." The legal position of the Suez Canal pilot is diffe-

(*s*) See *Lucey* v. *Ingram*, 6 M. & W. 302; *The Fama*, 2 W. Rob. 184.

(*t*) See *Att.-Gen.* v. *Case*, 3 Price, 302; *Carruthers* v. *Sidebotham*, 4 M. & S. 77; *Dodds* v. *Embleton*, 9 Dow. & Ry. 27; *Tyne Improvement Commissioners* v. *General Steam Navigation Co.*, L. R. 2 Q. B. 65; *Beilby* v. *Scott*, 7 M. & W. 93; *The Eden*, 10 Jur. 296; *The Agricola*, 2 W. Rob. at pp. 19, 20.

(*u*) *Longridge* v. *Dorville*, 5 B. & Ald. 117.

(*x*) *The Annapolis*, Lush. 295. And see *supra*, p. 206.

(*y*) As to the pilotage laws of some foreign countries and British colonies, see note at foot of this chapter.

(*z*) *The Halley*, L. R. 2 P. C. 193. See also *Smith* v. *Condry*, 1 How. 28, in which it was held by the Supreme Court of the United States that an American ship was not liable for a collision in British waters caused by the fault of a compulsory pilot.

(*a*) *The Hibernian*, L. R. 4 P. C. 511; *The Peerless*, Lush. 30; *The Halley*, *ubi supra*.

rent from that of a pilot in this country. His duty is not to take charge of the ship, but to advise the master as to the navigation of the canal. The responsibility of the owner is expressly reserved by the local regulations, and for a collision which occurs when the pilot is on board, and caused by his negligence, the owners are liable (*b*).

The Gay Mannering.

A collision between *The Winston Hall* and *The Guy Mannering* was caused by the bad navigation of *The Guy Mannering* while she had on board one of the company's pilots in pursuance of Art. 4. The fault on the part of *The Guy Mannering* was that her engines were not moved astern soon enough to prevent her coming into contact with the stern of *The Winston Hall*, which was passing through the canal ahead of her, and had stopped to enable a third vessel to pass. The master of *The Guy Mannering*, before the collision, informed the pilot, who appears to have been conducting the navigation of the ship, that his vessel was approaching too close to *The Winston Hall*, and suggested, more than once, that her engines, which had already been stopped, should be moved astern. The pilot refused to give the order, whereupon the master himself gave the order to move the engines astern, but too late to avoid the collision. Upon these facts it was held by the Court of Appeal that the owners of *The Guy Mannering* were liable for the injury done to *The Winston Hall* (*c*). The decision was based upon the ground that by the law of the country in which the collision occurred the pilot was on board merely to advise the master in matters requiring local knowledge; that the master and not the pilot had the command and charge of the vessel, and was responsible for her navigation.

In France; on the Danube.

There are similar decisions with reference to the shipowner's liability for collision caused by pilots in France (Havre) (*d*), Holland (*e*), Belgium (*f*), and on the Danube (*g*).

Damage to property of Thames Con-

By the Thames Conservancy Act, 1857 (*h*), it is enacted that owners of vessels navigating the Thames shall be liable

(*b*) *The Guy Mannering*, 7 P. D. 52, 132.
(*c*) *The Guy Mannering*, 7 P. D. 52; on app. *ibid.* 152.
(*d*) *The Augusta*, 6 Asp. M. C. 58, 161.
(*e*) *The Prins Hendrik*, (1899) P. 177.
(*f*) *The Dallington*, (1903) P. 77.
(*g*) *The Agnes Otto*, 12 P. D. 56.
(*h*) 20 & 21 Vict. c. 147 (local), s. 96.

for damage to property of the Conservators caused by persons belonging to or employed in their vessels. It has been held that this Act does not affect sect. 388 of the Merchant Shipping Act, 1854, and that the owners of a vessel in the Thames in charge of a compulsory pilot are not liable for damage done by the fault of the pilot to a vessel or other property belonging to the Conservators (*i*).

servancy by compulsory pilot.

Although the shipowner is, under the Harbours, Docks, and Piers Clauses Act, 1847, liable for damage to a pier or harbour works, even when such damage is caused by his ship when in the possession and control of persons for whose acts he would not be responsible at law, it is expressly provided that he shall not be liable under the Act when his ship is in charge of a compulsory pilot (*k*).

Damage to pier, dock or harbour works, caused by compulsory pilot

A local Act (the New Brighton Pier Act, 1864, s. 39) enacts, that if "any person having the care of" any craft should wilfully or carelessly damage the pier with such craft, her owner should be liable. The local Act incorporates the Harbours, Docks, and Piers Clauses Act, 1847, which (sect. 74) provides, in effect, that the owners of a ship that strikes and damages the pier shall be liable for the damage, but that nothing therein shall make them liable for damage by a vessel in charge of a compulsory pilot. It was held that the owners of a vessel which by the fault of her compulsory pilot damaged the New Brighton Pier were not liable for the injury to the pier; and that the words in the local Act were not the proper nor necessary description of, and did not apply to, a compulsory pilot (*l*).

Meaning of "person having the care of" a ship.

The fact that the compulsory pilot is selected by the shipowner, and is in his regular employment, does not make him liable for a collision caused entirely by the pilot's negligence (*m*).

Compulsory pilot selected by, and in regular employment of, the shipowner.

Barges in certain parts of the river Thames are required by law to be navigated by licensed watermen; but the owners of a barge, which does damage whilst in charge of a licensed waterman, are not relieved from liability (*n*).

Licensed watermen in the Thames.

(*i*) *Conservators of the River Thame* v. *Hall*, L. R. 3 C. P. 415.

(*k*) 10 & 11 Vict. c. 27, s. 74. See *River Wear Commissioners* v. *Adamson*, 1 Q. B. D. 546; 2 App. Cas. 743.

(*l*) *The Clan Gordon*, 7 P. D. 190.

(*m*) *The Batavier*, 2 W. Rob. 407; *The Hibernian*, L. R. 4 P. C. 511; the same was held in a case in the Ad. Div. 14th Dec. 1887.

(*n*) *Martin* v. *Temperley*, 4 Q. B. 298. See 7 & 8 Geo. 4, c. 74 (local).

Pilot whose employment was compulsory, but whose duty as pilot is at an end.

The presence on board of a pilot whose employment in the first instance was compulsory, but whose duty as pilot is at an end, and who is no longer in charge of the ship by compulsion of law, or otherwise than by the owners' or master's choice, does not discharge the owners. A vessel in charge of a compulsory pilot was brought up in the Mersey in an improper berth, and lay there from the 27th to the 29th of October, the pilot remaining on board. On the night of the 29th she was in collision with another ship to which she had given a foul berth. It was held that it was the master's duty to have shifted his berth between the 27th and the 29th, and that the owners were liable (*o*). But compulsory pilotage is not determined by a temporarily bringing up; it continues until the vessel is finally moored in the dock or berth to which she is bound (*p*).

Employment of pilot compulsory in first instance, though no compulsion to take a pilot at the place of collision.

Owners are exempt from liability in some cases where the collision is caused by a qualified pilot in charge of the ship, although at the spot where the collision occurs there is no compulsion to take a pilot on board. A vessel bound to London took a London pilot off Dungeness, where his employment was compulsory. A collision occurred by the pilot's fault on the voyage up the river at a spot within the port of London, but short of the ship's destination. It was held that, assuming the ship could not have been compelled to take on board a pilot at the place where the collision occurred (*q*), the shipowners were not liable for the collision. The engagement of the pilot having been, in the first instance, compulsory, and the right and duty of the pilot under that engagement being to navigate the ship to her destination, it was held that the relation of master and servant never arose between the owners and the pilot so as to make the owners liable for the pilot's acts (*r*).

(*o*) *The Woburn Abbey*, 38 L. J. Ad. 28. This case was decided upon the words of the local Act. In *The Christiana*, 7 Moo. P. C. 160 (under 6 Geo. 4, c. 125, s. 55), it was said by the Privy Council (though the *dictum* was not necessary for the decision of the case) that a pilot on board under somewhat similar circumstances remained in charge of the ship. See also the case next stated in the text. In America (*The Lotty*, Olcott, Adm. 329) it was held that the owners were liable for improper moorings twelve hours after the pilot had brought the ship up.

(*p*) *The Rigborgs Minde*, 8 P. D. 132, 135.

(*q*) She belonged to the port of London, and therefore may have been exempt. See *infra*, p. 244.

(*r*) *General Steam Navigation Co.* v.

A ship, being obliged by law to be navigated by a pilot when "proceeding to sea," left the Liverpool docks in charge of a pilot. Owing to unfavourable weather she was brought up in the river. It was held that the owners were not liable for a collision caused by the pilot's negligence whilst the ship was lying in the river (*s*). Collision whilst lying in Liverpool river with pilot on board.

A vessel, inward bound, was brought up in the river Mersey by a compulsory pilot preparatory to docking. The pilot remained on board, and in charge, receiving daily wages under the local Pilotage Act. It was held that the owners were not liable for damage done by her whilst so lying at anchor.

This case must be distinguished from *The Cachapool* (*t*), a decision under the same (Liverpool) Act. A vessel came out of dock in charge of a compulsory pilot, intending to go to sea the next day. She was brought up in the river, and during the night an accident happened to her mainyard, which it became necessary to repair before she went to sea. The next day a collision occurred. It was held that the ship was not proceeding to sea within the meaning of the Act, and that the owners were liable notwithstanding the presence of the pilot on board, but when a vessel anchored to wait for the tide to enable her to go into the Manchester Ship Canal Locks it was held that pilotage was still compulsory (*u*).

It has also been held that every vessel, except exempted small vessels, passing through the port of Liverpool to or from the Manchester Ship Canal is compulsorily in charge of a pilot under the Mersey Docks Consolidation Acts, 1858 and 1899 (*u*).

Where pilotage is compulsory for an inward bound ship, it does not cease to be compulsory by reason of a change of pilots during the pilotage and before the vessel arrives at her destination. Thus, where a vessel inward bound to the Prince's Change of pilots.

British and Colonial Steam Navigation Co., L. R. 3 Ex. 330; 4 Ex. 238. See also *The Charlton*, 8 Asp. M. C. 29.

(*s*) *The City of Cambridge*, *Wood* v. *Smith*, L. R. 4 A. & E. 161; *ibid.* 5 P. C. 451; *The Princeton*, 3 P. D. 90; *The Montreal*, 1 Sp. 154, note. These decisions were under the local Act. For other decisions under this Act, see below, p. 252.

(*t*) 7 P. D. 217.

(*u*) *The Mercedes de Larrinaga*, (1904) P. 215; 9 Asp. 571. See also *The Ole Bull*, (1905) P. 52; 10 Asp. 81.

Dock, Hull, took a pilot on board at sea, by whom she was brought up the river to the Island Pier, and then was placed in charge of another licensed pilot, by whose fault a collision occurred in the Humber Dock, it was held that the owners were not liable (*r*).

Failure to stand by when the ship is in charge of a compulsory pilot.

In every case of collision it is the duty of the master of each ship to "stand by" and assist the other; and not the less so because at the time of the collision his ship is in charge of a compulsory pilot. The law is express that, if he fails to do so, his ship "shall be deemed to be in fault." But, notwithstanding the terms of the statute, it seems that the owners would not be liable for the collision, if it were, in fact, caused entirely by the compulsory pilot (*x*).

Fault of compulsory pilot affects the ship for certain purposes.

The owner of a ship which by the fault of her compulsory pilot damages another, and, at the same time, receives injury herself, may recover half his loss from the other ship, if she is also in fault. But the fault of the pilot so far affects him that he cannot recover more than half his loss in such a case (*y*). And, where the other ship is also in fault, it is the rule of the Admiralty Division, and of the Court of Appeal, not to give costs to either side (*z*).

Collision whilst pilot below.

Where a collision occurred when the pilot was unavoidably below for a few minutes, after he had given the course, and left the deck in charge of one of the ship's officers, it was held that the owners were liable for a collision for which the ship was in fault (*a*).

Proof required that the negligence causing the loss was the negligence of the pilot.

Where a *primâ facie* case of negligence is established against a ship, to make the defence of "compulsory pilot" good, it must either be proved affirmatively that the negligence causing the collision was the negligence of the pilot (*b*); or there

(*r*) *The Rigborgs Minde*, 8 P. D. 132. In *The Challenge*, Ad. Div. 16th Dec. 1887, Butt, J., was of opinion that a sea pilot taking his ship to a buoy in the river (Thames), above the point at which he would usually have handed her over to the river pilot, was "compulsory" up to the buoy.

(*x*) See *The Queen*, L. R. 2 A. & E. 354. This case was decided under 25 & 26 Vict. c. 63, s. 35. The decision would, it is submitted, be the same in a similar case under the present Act, 57 & 58 Vict. c. 60, s. 422. See *supra*, p. 56.

(*y*) See *The Hector*, 8 P. D. 218; *Dudman* v. *Dublin Port, &c. Board*, Ir. Rep. 7 C. L. 518. See also *Spaight* v. *Tedcastle*, 6 App. Cas. 217; *The Energy*, L. R. 3 A. & E. 48.

(*z*) *The Rigborgs Minde*, 8 P. D. 132, 136.

(*a*) *The Mobile*, Swab. 69; on app. *ibid.* 127. As to the duty of the master to be on deck, see *The Obey*, L. R. 1 A. & E. 102.

(*b*) *Clyde Navigation Co.* v. *Barclay*, 1 App. Cas. 790.

must be proof of circumstances from which the Court will infer negligence on the part of the pilot. Where a collision was caused by the helm being improperly put to starboard, it was in one case held that, to relieve the owners from liability, it must be proved that the order to put the helm to starboard was given by the pilot (*c*). But it would seem that where the pilot is in charge, express proof of the order which caused the collision having been given by the pilot would not in all cases be necessary (*d*).

In *The Carrier Dove* (*e*), a ship in the Mersey was getting her anchor in heavy weather with the assistance of a tug ahead. She was struck by a squall, and driven on a ship at anchor. It was held by the Privy Council that the state of the weather and other circumstances made it imprudent and dangerous for her to get under way. The ship was in charge of a compulsory pilot; but, in the absence of proof that she was got under way by his orders, the owners were held liable.

Where a ship in tow ran into and damaged a pier in the Thames in consequence of the tug, without orders from the compulsory pilot in charge of the tow, improperly altering her course, it was held that the tow was liable (*f*).

A vessel was being towed from one dock to another at night when it was imprudent for her to be under way. The owners were held liable, notwithstanding the presence on board of a licensed pilot. It was said by the Court that the case differed from that of a ship in tow in broad daylight, when the tug is bound to obey the orders of the pilot (*g*).

Owners liable where there is negligence on the part of the ship's crew or officers

It is only where the collision is caused entirely by the fault of the pilot that owners are exempt from liability. If any fault or negligence on the part of the owners, or on the part of their agents, or the officers or crew of the ship, has contributed to the loss, they, as well as the pilot, are responsible (*h*). And the owners are responsible for the whole

(*c*) *The Schwalbe*, Lush. 239.
(*d*) *The Winston*, 8 P. D. 176.
(*e*) Brown & Lush. 113.
(*f*) *The Sinquasi*, 5 P. D. 241.
(*g*) *The Borussia*, Swab. 94. It is not clear whether the Court considered the pilotage compulsory. From *The Maria*, L. R. 1 A. & E. 358, it seems that under the local Act the employment of the pilot was not compulsory.
(*h*) *The Mobile*, Swab. 127; *The Diana*, 1 W. Rob. 131; 4 Moo. P. C. 11.

of the loss, though it was caused in part by the fault of the pilot (*i*).

Burden of proof as to negligence.

There has been some confusion as to the burden of proof in such cases; and until recently the law has been unsettled. It was at one time held that where a compulsory pilot was in charge or even on board, the owners were *primâ facie* exempted from liability (*k*). Then it was held that, in order to make good their claim to exemption, the owners must prove not only that the collision was caused by the pilot's fault, but that there was no contributory negligence on the part of the crew (*l*). It is now settled that the owners are not required to prove absence of contributory negligence, but that, under certain circumstances, it will be presumed. If the defendant owners prove fault on the part of the pilot sufficient to cause, and in fact causing, the collision, in the absence of proof by the plaintiffs of contributory negligence on the part of the crew, it is held that the defendants have satisfied the condition upon which their exemption depends, and they will not be called on to adduce further proof of a negative character to exclude the mere possibility of contributory fault. But if it appears that their owners, or their servants, have committed acts, or been guilty of omissions, which might have contributed to the collision, then it lies on them to prove that those acts or omissions did not in any degree contribute to the collision.

These points were decided in *Clyde Navigation Co.* v. *Barclay* (*m*), the effect of which case is thus stated by Lord Esher, M. R. :—"It amounts, in my opinion, to this—that where the plaintiffs make a *primâ facie* case, and the answer is that the defendants are exempt from liability on the ground of compulsory pilotage, and they give evidence which *primâ facie* proves that the accident was the fault of a pilot who was on board by compulsion of law, the burden of proof is then shifted back on to the plaintiffs if they allege that the defen-

(*i*) See *The Diana*, *Stuart* v. *Isemonger*, 4 Moo. P. C. 11.

(*k*) *The Vernon*, 1 W. Rob. 316; *Bennet* v. *Moita*, 7 Taunt. 258; *The Christiana*, 2 Hag. Ad. 183.

(*l*) *The Iona*, L. R. 1 P. C. 426. And see *The Velasquez*, L. R. 1 P. C. 494 (a case of doubtful authority).

(*m*) 1 App. Cas. 790. In this case the rule laid down in *The Iona*, L. R. 1 P. C. 426, was dissented from; the former case was followed in *The Daioz*, 3 Asp. M. C. 477; *The Marathon*, 48 L. J. Ad. 17; *The Indus*, 12 P. D. 46.

dants are guilty of some other act of negligence. This seems to be the meaning of that case. It does not alter the general and long accepted rules as to the burden of proof . . ." (*n*).

The principle as to the burden of proof in these cases is clear. The plaintiff, in order to recover damages, must prove fault on the part of those on board the defendant ship for which her owners are liable. *Primâ facie* the owners are liable for the fault of those in charge of their ship; but they are not liable for the fault of a compulsory pilot. Upon proof, therefore, by the defendants that their ship was in charge of a compulsory pilot, their *primâ facie* liability is rebutted. To enable the plaintiffs to recover in such a case, further proof is necessary on their part that the collision was caused partly by negligence of persons on board the defendant ship, for whose negligence her owners are liable. In the absence of evidence upon the point, such contributory or additional negligence will not be inferred (*o*).

Pilot called as a witness by the other ship.

Where the party relying upon the defence of compulsory pilotage is unwilling to call the pilot as a witness, the proper course appears to be for him to subpœna the pilot to produce his licence, and to be provided with evidence from the licensing authority identifying him as the person to whom the licence produced was granted, and with evidence from the ship identifying him as the person who was in charge of her. The licence usually has to be renewed periodically, and it must be proved that the licence produced has been renewed or was a valid licence at the date of the collision. The date of the renewal appears upon the face of a Trinity House licence.

Who is a qualified pilot.

It was held (*p*) that a pilot having a licence purporting to enable him to conduct vessels not drawing more than 14 feet is a qualified pilot within the meaning of 17 & 18 Vict. c. 104, s. 388, when conducting a ship drawing more than 14 feet, provided no pilot with the superior qualification was to be obtained. This decision turned on the words of the

(*n*) *Per* Lord Esher, M. R., *The Indus*, 12 P. D. 46, 49.

(*o*) See *The Winston*, 8 P. D. 176; *The Schwan, The Albano*, (1892) P. 419; *The Creadon*, 5 Asp. M. C. 585; *Burrell* v. *Macbrayne*, 18 Ct. of Sess. Cas. 4th ser. 1048.

(*p*) *The Carl XV.*, (1892) P. 324.

Order in Council (*q*). On the other hand, it was held that when a ship drawing 14½ feet was in charge of a pilot licensed for vessels drawing 14 feet and under, and it was not proved that a properly qualified pilot was not available, the plea of compulsory pilotage failed (*r*).

Qualified pilot superseding unqualified pilot.

A qualified pilot is empowered by law, in pilotage waters, to supersede an unqualified pilot who is acting in charge of a ship, whether the ship is subject to compulsory pilotage or not (*s*), and whether at the place where he meets her pilotage is compulsory or not. It has not been decided whether the owners are liable for a collision caused by the fault of a qualified pilot, who has superseded an unqualified pilot, under such circumstances. The statutory exemption probably does not apply to such a case; but, apart from the statute, it seems doubtful whether owners could be held liable for the acts of a pilot who takes charge of their ship under the authority of the law, not by their choice or as their servant.

Owners liable for fault of a waterman engaged at request of pilot.

Where the master of a French ship in the Thames, at the pilot's request, engaged a waterman to take the helm, and a collision occurred by the fault of the waterman in not carrying out the pilot's orders, it was held that the waterman was in the employment of the owners, and that they were liable (*t*).

Exemption of owners in case of compulsory pilotage will not be extended.

The rule that owners are not liable for damage done by their ship when in charge of a compulsory pilot, and by his fault, has been said to take away a remedy from the sufferer, and the Courts have shown some unwillingness in applying it (*u*). A defendant who succeeds only upon the defence of compulsory pilotage usually is given the costs of the action (*x*).

Whether fault of compulsory

In a case (*y*) before the House of Lords the question was

(*q*) Of 1st May, 1855.

(*r*) *The Uranus*, Ad. Ct. March 30 and 31, 1909 (Shipping Gazette).

(*s*) 57 & 58 Vict. c. 60, ss. 597, 598. It seems that the master of a tug employed to tow only, and not to pilot the ship, could not be superseded by a qualified pilot under the former Act. See *Beilby* v. *Scott*, 7 M. & W. 93, decided under 6 Geo. 4, c. 125.

(*t*) *The General de Caen*, Swab. 9.

(*u*) In *The Hatley*, L. R. 2 A. & E. 3, 15, Sir R. Phillimore said that the law, by which owners of a wrong-doing ship are not liable for the fault of a compulsory pilot, is "fruitful in injustice." But see the observations of the L. JJ., S. C. on app., L. R. 2 P. C. 193. The question rather is as to the justice of the law which makes one man liable for the fault of another man.

(*x*) See below, p. 308.

(*y*) *Spaight* v. *Tedcastle*, 6 App. Cas. 217.

raised, but not decided, whether the owner of a ship in tow and in charge of a compulsory pilot is prevented by the doctrine of contributory negligence from recovering from the owners of the tug for damage to the tow, caused partly by the fault of the pilot in charge of the tow, and partly by the fault of those in charge of the tug. It would seem that in such a case the negligence of the pilot being that of a person for whose acts the owners are not responsible, is immaterial, and cannot prejudice the right of the shipowners to recover against the wrong-doer (*z*). In a recent case Sir F. Jeune, P., was prepared to hold that this resulted from Merchant Shipping Act, 1894, s. 633 (*a*).

Pilot is contributory negligence such as to prevent owners from recovering.

The effect of the rule as to the non-liability of the shipowners for a collision caused by the fault of a compulsory pilot, in the case of a collision between a tug or her tow and a third ship, is considered in another chapter (*b*). It will be sufficient here to state that for a collision between the tow and a third ship, caused entirely by the fault of a compulsory pilot on board and in charge of the tow, the tow and her owners are free from liability (*c*). As regards a collision between the tug and a third ship, where the tow is in charge of a compulsory pilot, the law is not so clear. The general rule being, that those on board the tug are by the terms of the towage contract bound to obey the orders of the person in charge of the tow, it would seem that neither the tug nor the tow, nor the owners of either of them, should be liable for a collision between the tug or the tow and a third ship caused by those on board either the tug or the tow carrying out an improper order given by a compulsory pilot in charge of the tow. But it has been held in Admiralty that the tug is liable in such a case (*d*). And a ship in tow has been held liable for damage caused by her striking a pier in consequence of an improper alteration in the course of the tug made without orders from the compulsory pilot in charge of the tow,

Liability when tug is under orders of compulsory pilot in charge of tow.

(*z*) See *per* Lord Blackburn, 6 App. Cas. 217, 222; questioning the decision in *The Energy*, L. R. 3 A. & E. 48. See also *The Hector*, 8 P. D. 218.

(*a*) *The Adam W. Spies*, 70 L. J. Ad. 25.

(*b*) *Supra*, p. 177.

(*c*) *The Ocean Wave*, L. R. 3 P. C. 205. The law is the same as regards damage by a ship in tow to a pier or harbour works. See 10 & 11 Vict. c. 17, s. 74, *supra*, p. 68.

(*d*) *The Mary*, 5 P. D. 14, *supra*, p. 170.

but under circumstances which required her to act without waiting for orders from the tow (*e*).

Whether as between tug and tow compulsory pilot's negligence may be contributory.

In the case (*f*) in the House of Lords cited above, it seems to have been the opinion of Lords Selborne and Blackburn that the owners of a ship in tow and in charge of a compulsory pilot would not be prevented from recovering from the tug and her owners damages for injuries sustained by the tow in consequence of negligence on the part of those on board the tug, and also on the part of the pilot; in other words, that the negligence of the pilot was not contributory negligence such as to prevent their recovering damages against the tug and her owners.

Owners liable for deficiency of ship or equipment.

But though a compulsory pilot is primarily liable for a collision and the owners are not, yet the latter must, in order to escape liability, provide the former "with a competent crew, a competent look-out, and a well-found ship" (*g*), and if, through the owners' negligence, a ship is deficient in hull or equipment, and a collision occurs in consequence, her owners are liable although their ship is in charge of a compulsory pilot. Thus, owners have been held liable for the insufficiency of ground tackle (*h*). So if the vessel does not carry the proper lights (*i*), or will not steer (*k*), or if the crew is insufficient or incapable (*l*), or if the tug employed by the master is not of sufficient power (*m*), "compulsory pilotage" would be no defence.

But it is not necessary that the ship should be perfect in every respect, provided that, with ordinary care, she can be navigated with safety to other vessels. Where a vessel in collision with another was not in the best of trim, it was argued that the owners were liable, although she was in charge of a compulsory pilot. It was held by Dr. Lushington that

(*e*) *The Sinquasi*, 5 P. D. 241, *supra*, p. 170.

(*f*) *Spaight* v. *Tedcastle*, 6 App. Cas. 217, *supra*, p. 226. Cf. *The Bernina*, 13 App. Cas. 1.

(*g*) *The Tactician*, (1907) P. 244, p. 250; 10 Asp. 534.

(*h*) *The Massachusetts*, 1 W. Rob. 371.

(*i*) *The Ripon*, 10 P. D. 65.

(*k*) *The Livia*, 1 Asp. M. C. 204; *The Peru*, 1 Pritch. Ad. Dig. 3rd ed. p. 1112; *The Warkworth*, 9 P. D. 20, 145.

(*l*) *The General de Caen*, Swab. 9; *The Hope*, 1 W. Rob. 154. And see below, pp. 231, 232.

(*m*) *The Ocean Wave*, *Marshall* v. *Moran*, L. R 3 P. C. 205; *The Belgie*, 2 P. D. 57, note. And see *The Julia*, Lush. 224.

the owners were relieved from liability (*n*). He said: "If she was in ordinary safe trim, then, although she might be in handier trim, and although the trim of the ship in fact contributed to the collision, they (the owners) are not responsible." In a case in Ireland where the vessel was unhandy owing to her being too much down by the stern, the owners were held liable, for that reason, and also, it seems, on the ground that the pilot was not informed of the state of the ship's trim (*o*).

Relative positions, authority and duties of master and pilot.

Having regard to the rule of law which throws the liability for a collision caused wholly or in part by the fault of the master or crew upon the shipowner, and that for a collision caused wholly by the fault of the pilot upon the pilot alone, it is of importance that their respective duties should be clearly defined. The primary rule is that the pilot supersedes the master in all matters connected with the command and navigation of the ship. His authority is supreme; his orders must be implicitly obeyed, and any negligence in carrying them out, or interference with him in his duties, will make the owners liable in case of collision. "The duties of the master and the pilot are in many respects clearly defined. Although the pilot has charge of the ship, the owners are most clearly responsible to third persons for the sufficiency of the ship and her equipments, the competency of the master and crew, and their obedience to the orders of the pilot in everything that concerns his duty; and under ordinary circumstances we think that his commands are to be implicitly obeyed. To him belongs the whole conduct of the navigation of the ship, to the safety of which it is important that the chief direction should be vested in one only" (*p*).

Pilot's duties.

There have been numerous decisions as to what are matters connected with the navigation of the ship to which it is the duty of the pilot to attend. It has been held to be the duty of the pilot in bad weather to decide whether to get under way or to lay fast (*q*); to decide upon the time, place and

(*n*) *The Argo*, Swab. 462.
(*o*) *The Meteor*, Ir. R. 9 Eq. 567.
(*p*) *Per* Parke, B., in *The Christiana*, *Hammond* v. *Rogers*, 7 Moo. P. C. 160, 171; approved in *The City of Cambridge*, *Wood* v. *Smith*, L. R. 5 P. C. 151, 157.
(*q*) *The Carrier Dove*, Br & Lush. 113; *The Lochlibo*, 7 Moo. P. C. 127. There appears to be some

manner of turning a ship before going into dock (*r*); to give orders as to setting or taking in head sail when turning a ship in the river (*s*); to regulate the ship's course and speed by check ropes and warps when docking (*t*). It is the exclusive duty of the pilot to give the orders to the helm (*u*); to decide whether to comply with the statutory rule of the road or not (*x*); to decide upon the proper time and place of bringing up (*y*); and as to the proper mode of carrying the anchor, before letting go (*z*); to see that the ship rides with a proper scope of cable out; to tend her whilst swinging; to let go a second anchor if necessary; to manœuvre her if she parts from her anchor (*a*); and to shift his berth when circumstances occur which make it necessary in order to avoid collision (*b*). He decides as to the rate of speed, and the canvas to carry (*c*); whether to run through a crowded roadstead at night or to bring up (*d*). When brought up he must keep an eye on the weather, and be ready for a change without relying entirely upon the look-out for a report (*e*). It is his duty to keep the master informed of local rules and customs of navigation (*f*).

It is for the pilot to decide upon the time, place, and manner of turning a ship when docking (*g*). The omission to set some head sail, to help the ship round, was held by the Privy Council to be the fault of the pilot, and not of the master or crew (*h*).

doubt whether it is the exclusive duty of the pilot to decide whether to get under way in bad weather or not. See *The Girolamo*, 3 Hag. 169; *The Borussia*, Swab. 94; *The Ocean Wave*, L. R. 3 P. C. 205, 209; *The Oakfield*, 11 P. D. 34. And see *infra*, pp. 231, 233.

(*r*) *The Ocean Wave*, L. R. 3 P. C. 205.

(*s*) *The Ocean Wave*, *ubi supra*.

(*t*) *The Rigborgs Minde*, 8 P. D. 132. But see *The Cynthia*, 2 P. D. 52.

(*u*) *The Schwalbe*, Lush. 239; *The Winston*, 9 P. D. 85.

(*x*) *The Argo*, Swab. 462.

(*y*) *The Agricola*, 2 W. Rob. 10; *The George*, 4 Not. of Cas. 161; *The Christiana*, 7 Moo. P. C. 160, 172; *The Lochlibo*, *ibid.* 427; 3 W. Rob. 310; *The Rhosina*, 10 P. D. 131.

(*z*) *The Gipsy King*, 2 W. Rob. 537; *The Rigborgs Minde*, 8 P. D. 132, 136; *The Monte Rosa*, (1893) P. 23. But see *infra*, p. 232, as to the duty of the crew to see that the anchor is clear.

(*a*) *The City of Cambridge*, *Wood* v. *Smith*, L. R. 5 P. C. 451; *The Northampton*, 1 Sp. 152; *The Princeton*, 3 P. D. 90.

(*b*) As to where he has notice that he is in the way of a launch: *The Cachapool*, 7 P. D. 217.

(*c*) *The Calabar*, L. R. 2 P. C. 238; *The Maria*, 1 W. Rob. 95, 110; *The Julia*, Lush. 224; *The Batavier*, 1 Sp. 378, 383; 9 Moo. P. C. 286; *The Lochlibo*, *ubi supra*.

(*d*) *The Lochlibo*, *ubi supra*.

(*e*) *The Princeton*, 3 P. D. 90.

(*f*) *Burrell* v. *Macbrayne*, 18 Ct. of Sess. Cas. 4th ser. 1048.

(*g*) *The Ocean Wave*, *Marshall* v. *Moran*, L. R. 3 P. C. 205.

(*h*) *The Ocean Wave*, *ubi supra*.

If a tug is in attendance and the safety of the ship requires it, it is the duty of the pilot to employ the tug (*i*); and he has no right to get under way without the assistance of a tug, if it is dangerous to do so (*k*). And it seems that the pilot is responsible if the ship is got under way in weather when it is imprudent to move (*l*). This, however, is not clear, for, in some cases, it has been said that the master is responsible for being under way in improper weather (*m*). "There might be such a fog as to make it a fault on (the master's) part to allow his vessel to be moved. If there was a clear and plain prospect of danger the master could not throw the whole blame on the pilot if he order the vessel to get under way" (*n*).

Though the pilot, it seems, has no power to engage a tug, it is his duty, when the situation is critical and the safety of the ship requires it, to advise the master to do so (*o*). When a tug is engaged it is his exclusive duty to give orders as to taking on board (*p*) and casting off (*q*) the tow-rope, and, under ordinary circumstances, to direct the course and regulate the speed of the tug as well as that of the ship in tow (*r*).

Duties of master and crew.

Although the pilot's authority is paramount, it has already been stated that neither the owners nor the master are entirely free from responsibility; "there are many cases in which there are certain duties he (the master) has to discharge, notwithstanding there is a pilot on board, for the benefit of the owners" (*s*).

In accordance with this principle, the following are duties of the master and crew for which the owners are held responsible, notwithstanding the presence on board of a compulsory pilot. The master and crew must keep a good look-out, and keep the pilot informed of the position, movements of, and possible

(*i*) *The Peerless*, 13 Moo. P. C. 484. And see *The Julia*, Lush. 224.

(*k*) See *Kennedy* v. *The Sarmatian*, 2 Fed. Rep. 911. As to special lights, see *The Ripon*, 10 P. D. 65.

(*l*) *The Carrier Dove*, Br. & Lush. 113; *The Lochlibo*, 7 Moo. P. C. 427; *Burrell* v. *Macbrayne*, *ubi supra*.

(*m*) See *The Ocean Wave*, *ubi supra*; *The Girolamo*, 3 Hag. Ad. 169, *infra*, p. 236; *The Borussia*, Swab. 94. And see *supra*, p. 229.

(*n*) *Per* Sir J. Hannen, *The Oakfield*, 11 P. D. 34, 35.

(*o*) *The Julia*, Lush. 224.

(*p*) *The Julia*, *ubi supra*.

(*q*) *The Energy*, L. R. 3 A. & E. 48; *Spaight* v. *Tedcastle*, 6 App. Cas. 217; *Clyde Navigation Co.* v. *Barclay*, 1 App. Cas. 790.

(*r*) *The Ocean Wave*, L. R. 3 P. C. 205; *The Julia*, *ubi supra*; *The Energy*, *ubi supra*. See, however, *The Singuasi*, 5 P. D. 241. And see *supra*, p. 170.

(*s*) *The Batavier*, 1 Sp. 378, 383 S. C. on app. nom. *Netherlands Steamboat Co.* v. *Styles*, 9 Moo. P. C. 286.

danger to other ships (*t*); they must have the anchor clear, and ready to let go, when the pilot gives the order (*u*); the master is responsible for the sufficiency and power of a tug employed for ordinary towage service (*x*), and for the employment of a tug where the assistance of a tug is necessary (*y*); and although not bound to be always on deck (*z*), he is generally responsible for the ordinary work of the ship being properly carried on, and for usual precautions being taken without express order from the pilot (*a*). For the trim of the ship, and generally for her sufficiency as regards tackle and equipment for ordinary purposes of navigation, the owner or the master is responsible (*b*).

If the pilot is below, or for some other reason is not in charge of the deck at the time of collision, the owners would, it is conceived, be liable (*c*).

Where a ship is in tow of a tug, we have seen that, as a general rule, the tug is bound to obey the orders of the pilot in charge of the tow; but in the absence of orders from the pilot, it is the duty of those in charge of the tug to keep clear of other ships; and for a collision between the tow and a third ship caused by an improper alteration in the course of the tug made without orders from the pilot, the owners of the tow are liable (*d*).

A tug in the Mersey got orders from the compulsory pilot in charge of the ship in tow to "slew the ship round" preparatory to docking. The tug executed the manœuvre in an improper manner by towing the ship across the bows and foul of another at anchor. The owners of the ship in tow were held liable (*e*).

(*t*) *The Batavier*, *ubi supra*; *The Diana*, 1 W. Rob. 131; 4 Moo. P. C. 11; *The Velasquez*, L. R. 1 P. C. 494; *The Julia*, Lush. 224; *The Atlas*, 2 W. Rob. 502; *The Minna*, L. R. 2 A. & E. 97; *The Queen*, *ibid.* 354; *The Iona*, L. R. 1 P. C. 426; *The Schwan*, *The Albano*, (1892) P. 419.

(*u*) *The General Parkhill* and *The Centurion*, 1 Pritch. Ad. Dig. 1410. And see *The Peerless*, 13 Moo. P. C. 484; *The Rigborgs Minde*, 8 P. D. 132, 136; but see *The Rhosina*, 10 P. D. 24, 131.

(*x*) *The Ocean Wave*, *ubi supra*.

(*y*) *The Julia*, *ubi supra*.

(*z*) See *The Obey*, L. R. 1 A. & E. 102. And see *Speight* v. *Tedcastle*, 6 App. Cas. 217, 226.

(*a*) *The Christiana*, *infra*; *The Sinquasi*, 5 P. D. 241. And see cases cited *supra*, p. 230.

(*b*) *Supra*, p. 228.

(*c*) See *The Gordon*, 18 Lower Canada Jurist, 109.

(*d*) *The Sinquasi*, 5 P. D. 241.

(*e*) *The Locksley Hall*, Ad. Div. 28th March, 1887.

A ship was in collision with another coming out of dock. The latter had not been reported by the look-out. It was held that the duty of the look-out being to watch for and report vessels in the river, it was not negligence in them not to have reported the vessel in dock, and the vessel being in charge of a compulsory pilot, the owners were held free from liability (*f*).

A ship in charge of a compulsory pilot, having been in collision with another, drove foul of a third. It was held that the owners were liable in consequence of the negligence of the master and crew in the following particulars: in not veering out more chain to bring the ship up; in not bending a line on to a tow-rope, so as to enable a tug, which came alongside the ship sued, to keep her clear of the other ship; and in not getting sail on the ship (*g*).

Not sending down yards in heavy weather.

A ship in charge of a compulsory pilot was riding in the Downs in heavy weather, and drove from her anchors and fouled another ship. If some of her gear aloft had been sent down, she might have ridden in safety and escaped collision. It was held by the Privy Council that there was contributory negligence on the part of the master in not sending down the yards, and that the owners were liable. Parke, B., in delivering the judgment of the Court, said:—"The step being one which every master, according to ordinary rules of navigation, ought to have taken in every open roadstead, where many vessels were lying, and in blowing weather, that duty was not exclusively the pilot's, but that of the master also. And if the pilot had given express orders to the master not to send down top-masts, &c., we do not say that the owners might not have been excused from responsibility for the consequences of that omission" (*h*).

Owner liable for improper execution of pilot's orders.

The owners are responsible for the pilot's orders being promptly and efficiently carried out. If the helm is not shifted (*i*), the anchor let go (*k*), the engines stopped (*l*), or

(*f*) *The Calabar*, L. R. 2 P. C. 238.

(*g*) *The Annapolis* and *The Golden Light*, Lush. 355.

(*h*) *The Christiana*, *Hammond* v. *Rogers*, 7 Moo. P. C. 160, 173.

(*i*) *The Lochlibo*, 7 Moo. P. C. 427; *The Julia*, Lush. 224; *The Indus*, 12 P. D. 46, 48.

(*k*) *The Atlas*, 2 W. Rob. 502; *The Peerless*, 13 Moo. P. C. 484; *The Rigborgs Minde*, 8 P. D. 132.

(*l*) *The Ripon*, 6 Not. of Cas. 245.

the tow-rope cast off (*m*), promptly at the pilot's order, and a collision ensues, the owners are liable. It is the master's duty to repeat the pilot's orders (*n*), and to see that they are carried out. If, in carrying them out, ordinary prudence and seamanship require a particular precaution to be taken, it will be held to be negligence in the master if the precaution is omitted. Thus, the omission to run out a warp or check line when docking (*o*), or to cut a lanyard which holds two ships together when in collision (*p*), is held negligence in the master or crew.

Interference by master with the pilot.

In addition to the responsibility which attaches to the owners, though a compulsory pilot be on board, in respect of the proper equipment of the ship, and of certain acts of seamanship, as, for instance, in keeping a good look-out, a responsibility also rests on the master in case of an emergency, or where a reasonably prudent seaman would have taken some action, or have called the attention of the pilot to some fact. Neglect of such action by the master may place liability on the owners. Whether such a responsibility exists seems to be a question partly of nautical opinion, and partly of fact, and the decided cases may not therefore be always easy to reconcile, because the line of demarcation between proper and improper interference by the master with the pilot may vary according to individual opinion. "I have said on many occasions, and my ruling has been confirmed by the Judicial Committee in the case of *Hammond* v. *Rogers* (*q*), that a master has no right to interfere with the pilot, except in cases of the pilot's intoxication or manifest incapacity, or in cases of danger which the pilot does not foresee, or in cases of great necessity" (*r*). On the other hand, care must be taken not to interfere with the pilot unnecessarily; for if a collision occurs in consequence of improper interference with the pilot, the owners will be liable.

(*m*) *The Energy*, L. R. 3 A. & E. 48.

(*n*) *The Admiral Boxer*, Swab. 193; *The Lochlibo*, 3 W. Rob. 310, 328.

(*o*) *The Cynthia*, 2 P. D. 52. See, however, *The Rigborgs Minde*, 8 P. D. 132, where the duty to have a check line astern whilst warping through a dock was held to lie on the pilot.

(*p*) *The Massachusetts*, 1 W. Rob. 371.

(*q*) *The Christiana*, 7 Moo. P. C. 160, 171.

(*r*) *Per* Dr. Lushington in *The Argo*, Swab. 462, 464.

"It would be a most dangerous doctrine to hold, except under the most extraordinary circumstances, that the master could be justified in interfering with the pilot in his proper vocation. If the two authorities could so clash, the danger would be materially augmented, and the interests of the owner, which are now protected by the general principles of law, and specific enactments, from liability for the acts of the pilot, would be most severely prejudiced" (*s*).

A ship (*t*) was approaching a dock with a view to enter under sail, under the orders of the harbour master. The tide was falling, and at a critical point the harbour master gave the order "come on." The ship came on and took the ground, and was damaged. If, at the moment when the order to come on was given, the anchor had been let go, the damage would have been avoided. Two local hands had been taken on board to assist, and they knew of the danger. It was contended that their knowledge of the danger must be imputed to the master and owners, and that, therefore, the harbour authority was not liable for the wrong order given by the harbour master; but the House of Lords held that the fault was that of the harbour master alone, and that it would have been wrong for the master or for the local men to interfere.

A recent Scotch case shows that a pilot in a compulsory district who allows himself to be superseded by the master in the command of the ship, remains liable for any damage the ship may do through the master's negligence; and conversely, that the shipowners, in such a case, do not escape liability "simply because they have a [compulsory] pilot on board." The ship, one of the Anchor line, was being towed out of dock at Greenock, and one of the Anchor superintendents had taken charge of the ship on the bridge. The pilot was ordered aft, where it was impossible for him to see around, or to direct the ship's movements. He was nevertheless held liable for damage which she did to another ship, and his defence, that he was not in charge of the ship, was

(*s*) *Per* Dr. Lushington in *The Maria*, 1 W. Rob. 95, 110. See also *The Hibernia*, 4 Jur. N. S. 1244; *The Peerless*, Lush. 30; *The Duke of Sussex*, 1 W. Rob. 270, as to the danger of clashing authorities.

(*t*) *Roney* v. *Magistrates of Kirkcudbright*, (1892) App. Cas. 264.

rejected. "Where a pilot is placed in charge of a vessel it is his duty to take full charge of her, and to give such orders as are necessary to carry out what he thinks requires to be done. . . . His business was to insist on having sole charge of the vessel, and if that was not given to him, to refuse to have anything to do with the operations, the vessel being taken out of his hands" (*u*).

Whether master or pilot responsible for being under way in too dense fog.

In *The Girolamo* (*x*), a ship, with a pilot on board, was under way in the Thames in a fog so dense that she could not proceed without danger to other craft. Sir J. Nicholl expressed an opinion that, under such circumstances, it was the duty of the master to take the charge of the ship out of the pilot's hands, and to bring her up. In other cases, however, it has been doubted whether the master would be justified in exercising his own discretion in such a case; and the better opinion seems to be that the pilot is alone responsible for bringing the ship up when necessary (*y*). Thus it has been held that when the pilot was taking a ship on the wrong side of the river, in direct violation of the law, the master was not in fault for not interfering, and that he would not have been justified in doing so (*z*). In *The Julia*, Lord Kingsdown said that for a master to give to the man at the wheel a different order from that given by the pilot, while a tug was coming alongside to take the tow-line on board, was "misconduct in the master and disobedience to the orders of the pilot" (*a*). So, if the master, against the pilot's orders, takes on board and makes fast the tow-line, he and his employers, the shipowners, will be liable for a collision thereby occasioned (*b*).

Navigating on wrong side of river.

Suggestions to pilot.

In case of a manifest danger, it is the duty of the master to interfere to the extent of warning the pilot. For example, where a pilot thought two lights were on a moving vessel, when a competent navigator would have known that they were stationary, it was held that the master was to blame for

(*u*) *Per* Lord Justice Clerk, *Greenock Towing Co.* v. *Hardie*, 4 Ct. of Sess. Cas. (Fraser) 215.

(*x*) 3 Hag. Ad. 169.

(*y*) *The North American* and *The Wild Rose*, 14 L. T. 68; *The Lochlibo*, 3 W. Rob. 310, 320; 7 Moo. P. C. 427. And see *supra*, p. 230.

(*z*) *The Argo*, Swab. 462. But *aliter* as to lights: *The Ripon*, 10 P. D. 65.

(*a*) Lush. 224. And see *The Lochlibo*, *ubi supra*.

(*b*) *The Julia*, *ubi supra*.

not calling the attention of the pilot to this fact, and that the owners were responsible (*c*). In a salvage case, where a ship in charge of a pilot was in tow, and the course given to the tug by the pilot was clearly dangerous and wrong, Lord Campbell, in delivering the opinion of the Privy Council, said: "The master of the tug, watching the course the licensed pilot pursues, if he finds that this course will lead the vessel into danger, is bound to interfere and make a communication to the master of the ship, instead of making himself instrumental to the destruction of life and property" (*d*). And we have seen that, under some circumstances, it is the duty of the master of a tug towing a ship which is in charge of a pilot to alter his course for the purpose of keeping clear of other craft, without waiting for orders from the pilot (*e*).

In *The Lochlibo* (*f*), the question, what amount of interference with the pilot in the performance of his duties will make the owners liable, was discussed. An order given by the master or crew to the helm, and repeated mechanically by the pilot, amounts to "illegal interference"; but mere suggestion to, or consultation with, the pilot is not interference. Even a wrong order to the helm suggested by the master, and adopted advisedly by the pilot, is not interference on the part of the master such as to make the shipowner liable (*g*).

Duty of master to advise pilot of ship's peculiarities.

Where there is any peculiarity of the ship which makes her difficult for a stranger to handle, it is clearly the duty of the master to offer his experience and advice to a pilot who is a stranger to her (*h*).

Dock or harbour master in charge.

In many ports the harbour or dock-master has power, by Act of Parliament, to regulate the movements, mooring, and berthing of ships. When a vessel is acting under the orders of such a person her owners are, as regards liability for damage done by her, in the same position as when she is in charge of a compulsory pilot; the dock-master is not their

(*c*) *The Tactician*, (1907) P. 244; 10 Asp. 534. And see *The Lochlibo*, *ubi supra*; *The Oakfield*, 11 P. D. 34.

(*d*) *The Duke of Manchester*, *Shersby* v. *Hibbert*, 5 Not. of Cas. 470, 476.

(*e*) *The Singuasi*, 5 P. D. 241.

(*f*) 3 W. Rob. 310; affd. on app. 7 Moo. P. C. 427.

(*g*) *The Oakfield*, 11 P. D. 31.

(*h*) Cf. *The Meteor*, Ir. Rep. 9 Eq. 567.

servant, and they are not liable for damage caused by his negligence (*i*). Thus it was held that a ship which was damaged by another falling over against her at low water was not entitled to recover damages against the other, the latter having been berthed under the directions of the dock-master (*k*).

But in a place where vessels are required to take up their berths under the orders of a harbour master, if, without any directions from him, a ship takes up a berth at which she is afterwards injured by another properly berthed, she cannot recover against the latter (*l*).

If ordered to do so by the dock authorities, a ship must send down her yards; and she must shift her berth, even after she has been properly moored by their order, and though she is safer where she is (*m*).

If, in carrying out the orders of the dock-master, ordinary prudence would suggest that a particular precaution should be taken, a vessel neglecting to take that precaution will be held to be in fault. Thus when a ship was being moved under the orders of a dock-master, and negligently omitted to use a check rope, her owners were held liable for damage she did to other craft in consequence (*n*).

So, if a vessel ordered to shift from a berth to make room for another, moors so close that the swell of passing traffic causes her to range up against the other, she will be held liable (*o*). But where the dock-master gives a specific order, it seems that it must be obeyed, though those on board the ship may doubt its prudence (*p*).

A ship going out of dock under the orders of a dock-master was offered, and accepted, the services of the dock company's tug. Through want of power in the tug, a collision occurred. The owners were held liable, there being

(*i*) Cf. *The New York Packet*, 4 Low. Canada Rep. 343.

(*k*) *The Economy*, 1 Pritch. Ad. Dig. 3rd ed. 286. And see *The Bilbao*, Lush 149.

(*l*) *The Jacob*, 1 Pritch. Ad. Dig. 3rd ed. 286.

(*m*) *The Excelsior*, L. R. 2 A. & E. 268.

(*n*) *The Cynthia*, 2 P. D. 52. See also *The Excelsior*, L. R. 2 A. & E. 268.

(*o*) *The Greenpoint*, 18 Fed. Rep. 186.

(*p*) See *Reney* v. *Magistrates of Kirkcudbright*, (1892) App. 264.

no obligation upon them to accept the services of the tug, or on the company to supply one (*q*).

Liability of dock or harbour authority.

The dock or harbour authority is liable for injury done to a ship whilst under way and under the orders of the dock or harbour master (*r*); and the liability would be the same where damage is done by the ship (*s*).

Position, duty, and responsibility of master when pilot is on board.

In considering the shipowner's liability for collision where pilotage is compulsory, we have seen that the law assigns certain duties to the master and others to the pilot; and that, if the master interferes with the pilot in his own province, he does so at the risk of making his owner liable in case of collision. It is frequently the duty of a master to take a pilot (*t*) in waters where there is no compulsion o law to do so, and questions have arisen as to the scope of the master's authority and duty when a pilot is on board under such circumstances, and as to his liability, not only in respect of damages for collision, but for other matters connected with the navigation of the ship. There is reason to think that outside the law courts nautical opinion is by no means unanimous in assigning to the master the subordinate position in which he is placed by the Admiralty decisions.

In H.M.'s Navy.

It is possible that the doctrine of the Admiralty Court with reference to the supreme authority of the pilot may have originated in antiquated regulations for the Royal Navy, which provide that the pilot is to "have the sole charge and command of the ship"; that he is to give the orders for navigating the ship, and that the captain is to see them carried out (*u*). This view of the pilot's position and duties probably dates from the days when the navigating and fighting branches of the service were entirely distinct. Later regulations (of 1808 to 1899) are very different. Art. 1007 of the regulations of 1899 provides that the captain and navigating officer are to "attend particularly to his (the

(*q*) *The Belgic*, 2 P. D. 57, note.

(*r*) *The Zeta*, (1893) App. Cas. 468; *The Rhosina*, 10 P. D. 24.

(*s*) See, on this question, *Mersey Dock Trustees* v. *Gibbs*, L. R. 1 H. L. 93; *Metcalfe* v. *Hetherington*, 11 Ex. 257; 5 H. & N. 719; *Holman* v. *Irvine Harbour Trustees*, 4 Ct. of Sess. Cas. 4th ser. 406; *Shaw, Savill and Albion Co.* v. *Tamaru Harbour Board*, 15 App. Cas. 429; *The Apollo*, (1891) App. Cas. 499, *supra*, p. 92; *The Burlington*, 8 Asp. M. C. 38; *The Ratata*, (1898) App. Cas. 513.

(*t*) See *infra*, p. 241.

(*u*) MSS. Regulations for 1790, in the Admiralty Library at Whitehall.

pilot's) conduct," and that if he is "not qualified to conduct the ship" or runs her into danger, he is to be "removed from charge"; "and if the ship should be at any time damaged through the ignorance or negligence of the pilot, when a common degree of attention on the part of the captain and navigating officer would have prevented the disaster, those officers will be deemed to have neglected their duty." Under this article it is held by the Lords of the Admiralty that, if a ship gets ashore on a well-known sand in consequence of an obviously wrong course given by the pilot, the captain is responsible. Thus, in the case of *The Vigilant*, which got ashore on the Gunfleet Sand on the 22nd of October, 1862, with a pilot on board, the captain and the master were severely censured by the Lords of the Admiralty (*x*).

Opinion of Elder Brethren of the Trinity House.

The opinion of the Elder Brethren of the Trinity House upon the respective duties of master and pilot is as follows:— "That in well-conducted ships the master does not regard the presence of a duly licensed pilot in compulsory pilot waters as freeing him from every obligation to attend to the safety of the vessel; but that, while the master sees that his officers and crew duly attend to the pilot's orders, he himself is bound to keep a vigilant eye on the navigation of the vessel, and, when exceptional circumstances exist, not only to urge upon the pilot to use every precaution, but to insist upon such being taken." And they add, that this is the view generally taken by shipowners (*y*).

Opinion of the Board of Trade.

The opinion of the Board of Trade as to the responsibility of the master is that "he is bound to exercise a vigilant supervision, and that, though the advice of the pilot is of the greatest value, the master is not bound to follow it implicitly, if it appears in his deliberate judgment to involve danger to the ship." In accordance with this opinion, the Board of Trade holds that it rests with the master to decide whether in bad weather he will get under way for sea, and to say whether, under threatening circumstances, he will proceed or turn back (*z*).

(*x*) See Report, &c. of the Unseaworthy Ships Commission, 1874, vol. 2, p. 528.

(*y*) See note (*x*), *supra*.

(*z*) See a letter from T. Gray, Esq., to the Mercantile Marine Association,

The Merchant Shipping Acts.

The Legislature has not defined the duties of the pilot: but it assumes that it is the pilot's duty to conduct the navigation of the ship. In the Merchant Shipping Act, 1894, he is spoken of as "having the conduct," "having command or charge," "having charge," "taking charge," and "acting in charge" of the ship: the master is required to "give the charge of piloting the ship to him" (*a*).

Foreign law as to position and duty of pilot.

In the Suez Canal and elsewhere abroad there is a fixed and compulsory charge for pilotage, but the pilot does not supersede the master in the command and conduct of the ship. He is on board only as the adviser of the master: the responsibility as regards the navigation of the ship remains with the master (*b*). It is believed that the position of the pilot and the liability of the shipowner is the same in Canada (*c*), France, Holland, Belgium, on the Danube (*d*), and in Spain (*e*); but in Portugal (*f*) the law is similar to that of England. In America it seems that the ship is liable *in rem*, but that the shipowner is not liable *in personam* where he is compelled to employ the first pilot who offers (*g*). The German Commercial Code, Art. 738, appears to exempt owners from liability for the negligence of a compulsory pilot (*h*).

Pilot as witness.

When the question at issue is solely whether the collision was caused by the fault of the pilot who, it was admitted, was compulsorily in charge, the Court has in its discretion

4th Oct. 1873, Unseaworthy Ships Commission, 1874, vol. 2, p. 527. As to the view taken by the Admiralty Court on this point, see above, p. 234.

(*a*) See sects. 595, 596, 624, 633, 742; and *per* Brett, L. J., *The Guy Mannering*, 7 P. D. 132, 134. See also *The Clan Gordon*, 7 P. D. 190, where it was held that the words "any person having the care of" a ship did not refer to or properly describe a compulsory pilot. The duty to stand by after collision is cast upon the "person in charge," who appears to be the master and not the pilot. See *supra*, p. 58.

(*b*) *The Guy Mannering*, 7 P. D. 52, 132.

(*c*) 36 Viet. c. 54 (Canada). Cf. *The Quebec* and *The Charles Chaloner*, 19 Lower Canada Jurist, 201.

(*d*) See *supra*, p. 218.

(*e*) The Spanish Commercial Code, Art. 834, expressly provides that the presence on board of a pilot shall not exempt the shipowner from liability.

(*f*) See Com. Code Portugal, Art. 492 (3).

(*g*) *Smith* v. *Condry*, 1 How. 28; *The China*, 7 Wall. 53; *Smith* v. *The Creole*, 2 Wall. jun. 485; *Homer Ramsdell Co.* v. *Compagnie Générale Transatlantique*, 182 U. S. Rep. 406; *Ex parte McNeal*, 13 Wall. 236; *Bussy* v. *Donaldson*, 4 Dallas, 191; *Flanigan* v. *Washington Insurance Co.*, 7 Barr. 306.

(*h*) It has been stated that the exemption extends only to the acts of harbour masters and their assistants.

given the pilot an opportunity of giving evidence, if neither side has called him (*i*). But it cannot be said that there is a definite or long-standing practice on this point.

In what Waters and for what Ships Pilotage is Compulsory.

In what waters and for what ships pilotage is compulsory.

Compulsory pilotage exists only in waters within the jurisdiction of a duly constituted pilotage authority, and for certain classes of ships upon particular voyages. Some of the principal pilotage authorities, such as the Trinity Houses of London, Hull, Newcastle, and Leith, were originally constituted by charter; but these, as well as various other authorities existing round the shores of the United Kingdom, are now regulated by Act of Parliament. The Acts relating to pilotage are general and local. The general law as to pilotage is contained in the Merchant Shipping Act, 1894 (*k*). The local Acts are stated below (p. 247) in connection with the places to which they relate. The Merchant Shipping Act authorizes bye-laws to be made for the regulation of pilotage, which in some cases are required to be approved by his Majesty in Council.

To ascertain whether, in a particular case, pilotage is compulsory or not, it is necessary to consider the combined effect of the general and local Acts, and of the bye-laws for the time being in force under them. The question is frequently one of great difficulty.

General pilotage Acts.

By 57 & 58 Vict. c. 60, s. 603, compulsory pilotage was continued in all districts and for all ships (*l*) in and for which pilotage was compulsory on the 1st of January, 1895, the date of that Act coming into operation. The extent to which pilotage is compulsory can, therefore, be ascertained only by reference to the general and local Acts relating to pilotage in operation at that date. The general Act of that date was 17 & 18 Vict. c. 104; and that Act refers the enquirer back, in similar terms, to the Act which was in force immediately

(*i*) *The Cardiff*, (1909) P. 183.
(*k*) 57 & 58 Vict. c. 60, Part X. See also 39 & 40 Vict. c. 36, s. 141.
(*l*) In Part X. of the Act, "ship" includes foreign ships. See sect. 572.

before it came into operation (1st May, 1855), namely, 6 Geo. 4, c. 125 (*m*).

By the same section (sect. 603) of the Act of 1894, it is provided that all (*n*) exemptions from compulsory pilotage in force on the 1st of January, 1895, shall be continued. It was held that the corresponding provision of the Act of 1854 was general, and that its operation was not restricted by subsequent parts of the same Act which related exclusively to the London Trinity House (*o*).

Ships carrying passengers between places in the United Kingdom

The following section, sect. 604 (1), however, restricts the operation of sect. 603. It imposes compulsory pilotage on all vessels carrying passengers between places situated in the British Islands. So far as sect. 604 is inconsistent with sect. 603, the former section prevails. Pilotage, therefore, is compulsory for vessels carrying passengers between the places mentioned above (*p*), although they were exempt under 6 Geo. 4, c. 125 (*q*); and it seems that, in the absence of express provision upon the point, sect. 604 overrides all exemptions from compulsory pilotage, whether by Order in Council or statute.

Illustrations.

The following decisions illustrate the effect of the above sections. Notwithstanding the words of 17 & 18 Vict. c. 104, s. 379, purporting to exempt certain classes of ships in the London Trinity House district, "when not carrying passengers," those ships, if exempt under the Act of Geo. 4, are

(*m*) There is some doubt as to how far the Act of Geo. 4 is general, and how far it relates only to the London Trinity House pilotage. The preamble and some of its provisions appear to confine its operation to London Trinity House pilotage; see *The Eden*, 2 W. Rob. 442; *Attorney-General* v. *Case*, 3 Price, 302; *The Maria*, 1 W. Rob. 95; but in *Tyne Improvement Commissioners* v. *General Steam Navigation Co.*, L. R. 2 Q. B. 65, it was held to apply to pilotage on the Tyne; and in *The Killarney*, Lush. 427, to Hull pilotage; and some of its sections are clearly of general application. See *Beilby* v. *Scott*, 7 M. & W. 93; *Carruthers* v. *Sydebotham*, 4 M. & S. 77; *The Hankow*, 4 P. D. 197.

(*n*) As to ships from Sweden and Norway to London, see 60 & 61 Vict. c. 61; and *The Columbus*, *infra*, p. 256, n. (*n*).

(*o*) See *infra*, p. 257.

(*p*) A vessel must have at least one passenger on board to come within the operation of sect. 354; *The Hanna*, L. R. 1 A. & E. 283; *The Lion*, L. R. 2 P. C. 525. Distressed seamen sent home by a consular officer under M. S. Act, 1894, ss. 191, 192, are not passengers within sect. 604; *The Clymene*, [1897] P. 295. The marginal note to sect. 604 of the M. S. Act, 1894, which describes that section as relating to "home trade passenger ships," seems incorrect. See sect. 742 of the same Act.

(*q*) *The Temora*, Lush. 17.

not required to take pilots though carrying passengers, unless they are plying between places in the British Islands. Thus a vessel on a voyage from London to the Baltic, with passengers on board, is not required to take a pilot in the Thames (*r*). But a vessel whilst she is within the port to which she belongs (*s*), an Irish trader in the Thames (*t*), and a coaster (*u*) (though exempt by the Act of Geo. 4), must take a pilot if carrying passengers between the places mentioned above; and a ship with passengers from Leith to Newcastle must take a pilot notwithstanding sect. 16 of the Tyne Pilotage Confirmation Act, 1865 (*x*).

The Marmion, a steamship with passengers on board, on a voyage from Leith to London, was in collision, by her own fault, in the Thames above Gravesend, within the port of London. Her master had a pilotage certificate from Orfordness to Gravesend. At the time of the collision the ship was in charge of a Trinity pilot. The defence of compulsory pilotage being set up, it was contended that the ship was exempt as being a coaster within 6 Geo. 4, c. 125, s. 59. It was held that she was not exempt; and that, being in charge of a compulsory pilot, her owners were not liable (*y*).

The Hankow (*z*), a steamship with passengers on board, and

(*r*) *Reg.* v. *Stanton*, 8 Ell. & B. 445. And see *The Earl of Auckland*, Lush. 164; on app. *ibid.* 387; *The Moselle*, 32 L. T. 570.

(*s*) Exempt (*semble*) by 6 Geo. 4, c. 125, s. 59, and 17 & 18 Vict. c. 104, s. 353: *Dublin Port and Docks Board* v. *Shannon*, Ir. Rep. 7 C. L. 116. There is some doubt whether the Act of 6 Geo. 4, c. 125, applied to Ireland. See *The Eden*, 2 W. Rob. 442. The port to which a ship belongs is her port of registry for the time being: 57 & 58 Vict. c. 60, s. 13. It has been stated (Pilotage Committee Report, 1888) that it is the practice of some owners to register their ships trading to London at some other port in order that pilotage may be compulsory, so that they may not be liable in case of collision.

(*t*) *The Temora*, Lush. 17.

(*u*) *The Marmion*, *General Steam Navigation Co.* v. *London and Edinburgh Shipping Co.*, Mitch. Mer. Reg., 1st June, 1877; reported on another point, 2 Ex. D. 467.

(*x*) *The Warsaw*, (1898) P. 127.

(*y*) *The Marmion*, *ubi supra*.

(*z*) 4 P. D. 197. Sir R. Phillimore considered that the case was governed by *The Killarney*, Lush. 427, and that *The Stettin*, Br. & Lush. 199, was not to be followed. The question as to the construction of the Act of Geo. 4 was decided in accordance with *The Stettin* in *The General Steam Navigation Co.* v. *The British and Colonial Steam Navigation Co.*, L. R. 3 Ex. 330; on app. *ibid.* 4 Ex. 238 (see *supra*, p. 220). It seems doubtful whether the decision in *The Hankow*, that the charter of James 2 was a particular provision within the meaning of the Act of Geo. 4, is correct. See 52 Geo. 3, c. 39, s. 32; 48 Geo. 3, c. 104, s. 29; 4 Geo. 4, c. 77; Orders in Council of 13th Dec. 1843; 3rd Sept. 1844; 8th Aug. 1845.

belonging to the port of London, on her voyage from Australia to London, was in collision in the port of London, whilst in charge of a Trinity river pilot taken on board at Gravesend. It was held that pilotage was compulsory, and that her owners were not liable. The charter of James 2 to the London Trinity House being produced, it was held that the port of London was a place for which "particular provision" as to pilotage had been made, within the meaning of 6 Geo. 4, c. 125, s. 59; and, consequently, that there was no exemption from liability.

General exemptions from compulsory pilotage.

Pilotage is not compulsory for ships in distress, ships unable to obtain a qualified pilot, ships docking or changing moorings in port (*a*), or certain foreign ships under 60 tons, exempted by Order in Council under 4 Geo. 4, c. 77, s. 5, or 6 Geo. 4, c. 125, s. 60 (*b*).

Ships passing through a pilotage district.

Another general exemption from compulsory pilotage is created by 57 & 58 Vict. c. 60, s. 605, which is as follows:—

"(1.) The master and owner of any ship passing through any pilotage district in the United Kingdom on a voyage between two places both situate out of that district (*c*), shall be exempted from any obligation to employ a pilot in that district, or to pay pilotage rates when not employing a pilot within that district.

"(2.) The exemption under this section shall not apply to ships loading or discharging at any place situate within the district, or at any place situate above the district, on the same river or its tributaries" (*d*).

The district intended in this enactment is a district other than that in which the final port of discharge or the port of loading is situate (*e*). It is not clear whether a vessel arriving from abroad and calling at a place in the United Kingdom

(*a*) 57 & 58 Vict. c. 60, s. 596; as to this exemption, see *The Victoria*, Ir. Rep. 1 Eq. 336; *The Maria*, L. R. 1 A. & E. 358; *Gregory* v. *Jones*, 90 L. T. 42, *infra*, p. 246, note (*g*); and as to a similar exemption under the Act of Geo. 4, see *Thornton* v. *Boland*, 2 Bing. 219; *McIntosh* v. *Slade*, 6 B. & C. 657; and as to the law under 5 Geo. 2, c. 20, see *Rex* v. *Lambe*, 5 T. R. 76; *Rex* v. *Neale*, 8 T. R. 241.

(*b*) Orders in Council of 13th Dec. 1843; 3rd Sept. 1844; and 8th Aug. 1845, all made under the latter Act, appear to be obsolete.

(*c*) *Sic.*

(*d*) An exemption similar to this is in force within the London Trinity House districts under a bye-law approved by Order in Council of 18th Feb. 1854, *infra*, p. 255.

(*e*) *Per* Brett, M. R., *The Winston*, 9 P. D. 85, where the history of this enactment is traced.

for orders would be exempt under this section. It would, probably, be held that she is not exempt. *The Winston* (*f*) put into Dartmouth on a voyage from New York to Newcastle, and took on board twenty tons of bunker coals to complete her voyage. It was held that she was subject to compulsory pilotage, and therefore was not liable for a collision which occurred by the fault of the pilot in charge of her as she was leaving the harbour. The word "loading" did not, it was held, refer to cargo alone.

A vessel with foreign cargo on board and no passengers, on her passage from London to Liverpool, entered the Holyhead pilotage district to take on board her Liverpool pilot, diverging from her Liverpool course for the purpose. She did not anchor, and stopped her engines only to take the pilot on board. It was held that she was not required to take a Holyhead pilot (*g*).

Masters' and mates' pilotage certificates.

British or foreign (*h*) ships, of which the master or mate has a pilotage certificate in accordance with the Merchant Shipping Acts, are exempt (*i*).

Differential pilotage rates.

By the Customs Consolidation Act, 1876 (*k*), it is provided that no foreign ship on a voyage from any place in the United Kingdom or the Channel Islands to any other such place shall be subject to any higher or other pilotage charge, or to any other rules as to the employment of pilots, than a British ship in the like case.

Policy of the law of compulsory pilotage.

The policy of the law, which seems formerly to have inclined towards compulsory pilotage for the supposed benefit of commerce and safety of seamen's lives (*l*), is now in favour of restricting compulsory pilotage within as narrow limits as possible (*m*). The Act of 1894 (s. 578) enables pilotage authorities to make bye-laws to regulate pilotage and to exempt ships. It was held that, under similar powers given by the Merchant Shipping Acts of 1854 and 1862, pilotage could in no case be made compulsory for ships which were

(*f*) 8 P. D. 176; 9 P. D. 85. In this case *Muller* v. *Baldwin*, L. R. 9 Q. B. 457, was referred to with reference to bunker coals.

(*g*) *Gregory* v. *Jones*, 90 L. T. 42.

(*h*) 57 & 58 Vict. c. 60, s. 572.

(*i*) 57 & 58 Vict. c. 60, ss. 599—602. As to these certificates, see *The Killarney*, Lush. 202; *The Beta*, Br. & L. 328; *The Earl of Auckland*, Lush. 164; on app. *ibid.* 387.

(*k*) 39 & 40 Vict. c. 36, s. 141.

(*l*) *Lucey* v. *Ingram*, 6 M. & W. 302; *The Fama*, 2 W. Rob. 184.

(*m*) See *per* Sir R. Phillimore, *The Halley*, L. R. 2 A. & E. 3, 16.

exempt at the time of the passing of the Act of 1854 (*n*). But bye-laws, requiring a pilot to be taken under a penalty, and made under a local Act, which gave a general power to regulate the navigation of the port, but did not itself make pilotage compulsory, or give express power to make it so, were held valid (*o*).

Summary of Local Pilotage Acts.

Places at which compulsory pilotage exists.

The places at which, and the Acts, bye-laws, and Orders in Council, under which compulsory pilotage exists at various ports in the United Kingdom, are as follows (*p*):—

Aberavon: See *Port Talbot*.

Aberbrothwick or *Arbroath:* Pilotage appears to be compulsory under the bye-laws (*q*); but no express power to make it compulsory is given by the local Acts; 2 & 3 Vict. c. 16 (local); 27 & 28 Vict. c. 33 (local); for bye-laws, see Parl. Paper, No. 154, Sess. 1889.

Aberdeen: Pilotage is compulsory for inward-bound vessels; 31 & 32 Vict. c. 138 (local), ss. 135 *seq.*; for bye-laws, see Parl. Paper, No. 154, Sess. 1889; Ords. in Council of 25th June, 1872; 15th Oct. 1894.

Aberdovey: See *London Trinity House*.

Arundel: Pilotage is compulsory for all vessels of 30 tons and upwards; 33 Geo. 3, c. 100 (local); for bye-laws, see Parl. Paper, No. 210, Sess. 1896.

Ayr: Pilotage is compulsory for vessels inward and outward bound; 18 & 19 Vict. c. 119 (local), s. 51, except vessels under 40 tons, see Parl. Paper, No. 408 of 1867; for bye-laws, see Parl. Paper, No. 154, Sess. 1889; No. 181, Sess. 1890; No. 160, Sess. 1894.

Ballina: Pilotage is compulsory for inward-bound vessels;

(*n*) *The Earl of Auckland*, Lush. 164, 387; *Reg.* v. *Stanton*, 8 E. & B. 445; 57 & 58 Vict. c. 60, s. 578.

(*o*) *The Ruby*, 15 P. D. 139, 164.

(*p*) A return of the rules and bye-laws for the time being in force is made yearly to the Board of Trade by every pilotage authority, and the returns are laid before Parliament: see 57 & 58 Vict. c. 60, s. 585. The last return is Parl. Paper, No. 312, Sess. 1902. The limits of the several pilotage districts, and the bye-laws, will be found set out in these returns. The effect of Orders in Council made under the powers of the repealed Merchant Shipping Acts is preserved by 57 & 58 Vict. c. 60, s. 745.

(*q*) Upon the principle of *The Ruby*, 15 P. D. 139, 164. The bye-laws appear to be made under s. 103 of 2 & 3 Vict. c. 16 (local); they are dated 31st Jan. 1873.

23 & 24 Vict. c. 165 (local), ss. 42, 43; for bye-laws, see Parl. Paper, No. 154, Sess. 1889.

Ballyshannon: Pilotage is free; see *infra*, p. 262.

Barry: Pilotage is free; see *infra*, p. 262.

Beaumaris: See *London Trinity House.*

Belfast: Pilotage is compulsory for vessels inwards and outwards, except ships in ballast, and ships coming in from stress of weather and whilst within the limits of the out-pilot ground; 10 & 11 Vict. c. 52 (local), ss. 98—106; for bye-laws, see Parl. Paper, No. 154, Sess. 1889 (*r*); No. 160, Sess. 1894; No. 290, Sess. 1897; No. 265, Sess. 1900; Ords. in Council of 15th Aug. 1890; 26th June, 1893; 13th May, 1896; 27th Dec. 1899.

Berwick: Pilotage free; *infra*, p. 261.

Blakeney or *Clay:* Pilotage is compulsory for all vessels, except coasters of 50 tons and upwards, entering or leaving the harbour; 57 Geo. 3, c. 70 (local); for bye-laws, see Parl. Paper, No. 154 of 1889.

Blyth: See *Newcastle.*

Borrowstounness: Pilotage free; *infra*, p. 262.

Boston: Pilotage is compulsory inwards and outwards for vessels over 30 tons o. m.; 16 Geo. 3, c. 23; for bye-laws, see Parl. Paper, No. 181, Sess. 1890, and Ord. in Council of 28th Nov. 1889; see also 32 Geo. 3, c. 79.

Bridgwater: See *London Trinity House.*

Bristol (*s*): Pilotage is compulsory for all vessels navigating the Bristol Channel eastwards of Lundy Island (4° 40′ W. long.) (*s*), except coasters, Irish traders, and vessels bound to or from Cardiff, Newport, or Gloucester; 47 Geo. 3 (Sess. 2), c. 33 (local), ss. 9—27; 24 & 25 Vict. c. 236 (local), s. 4; but see 11 & 12 Vict. c. 43 (local); for Pilotage Order Confirmation Acts, see 53 & 54 Vict. c. 208 (local); 54 & 55 Vict. c. 160 (local); for bye-laws, see Parl. Paper No. 265, Sess. 1900; Ords. in Council of 21st Oct. 1890; 30th July, 1891; 19th May, 1899; 14th July, 1899; 20th May, 1903. As to Breandown Harbour, see 25 & 26 Vict. c. 29 (local). See also *Neath*, *Bridgwater*, *Swansea*, *Penarth*, *Cardiff*, *Newport*, *Gloucester.*

Buckie (*Cluny*): In Parl. Paper, No. 312, Sess. 1902, pilotage is stated to be compulsory. *Sed. qy.* See 37 & 38 Vict. c. 185 (local); bye-laws, Parl. Paper, No. 154, Sess. 1889.

(*r*) *The De Brus*, Ir. Rep. (Ad.) 1 Eq. 72; *The Arbutus*, 11 L. T. 208.

(*s*) *Hall* v. *Cardiff Pilotage Board*, C. P. D. 18th Nov. 1879; *The Charlton*, 8 Asp. M. C. 29; Parl. Paper, No. 154, Sess. 1889.

Buryhead: Pilotage is compulsory for ships over 40 tons; 21 Vict. c. 39 (local), s. 23; bye-laws, Parl. Paper, No. 154, Sess. 1889.

Burntisland: Pilotage free; *infra*, p. 262.

Caernarvon, Carlisle: See *London Trinity House.*

Cardiff: Pilotage free; *infra*, p. 262.

Carlingford Bar: In Parl. Paper, No. 210, Sess. 1896, pilotage is stated to be compulsory. *Sed qy.* See 27 & 28 Vict. c. 93; Parl. Paper, No. 154, Sess. 1889.

Charlestown: Pilotage free; *infra*, p. 262.

Chester: Pilotage is compulsory for all vessels, except coasters and Irish traders; 16 Geo. 3, c. 61 (local) (*t*); for bye-laws, see Parl. Paper, No. 154, Sess. 1889; No. 181, Sess. 1890; Ord. in Council, 28th Nov. 1887.

Clyde: See *Glasgow.*

Colchester: See *London Trinity House.*

Coleraine: Pilotage is compulsory except for certain vessels exempted by 42 & 43 Vict. c. 175 (local), s. 91. See 26 & 27 Vict. c. 100 (local), ss. 54—56; 48 & 49 Vict. c. 185 (local), and Acts therein recited; Ords. in Council, 25th Jan. 1887; 20th Oct. 1898; Parl. Paper, No. 154, Sess. 1889; No. 242, Sess. 1899.

Cork: Pilotage free; *infra*, p. 262.

Dartmouth: See *London Trinity House.*

Dingle: Pilotage free; *infra*, p. 262.

Drogheda: Pilotage is compulsory, inwards and outwards, for all vessels except steamships; 5 Vict. (Sess. 2) c. 56 (local), ss. 200—205; and vessels under 30 tons; for Rules, &c., see Parl. Paper, No. 154, Sess. 1889.

Dublin: Pilotage is compulsory for all vessels inwards and outwards of the port of Dublin or the harbour of Kingstown, except coasters under 50 tons, vessels in ballast and coasters laden with fish in bulk or potatoes; 32 & 33 Vict. c. 100 (local), ss. 20 *seq.*; for bye-laws, see Parl. Paper, No. 154, Sess. 1889; Ords. in Council of 4th Dec. 1861, and 28th July, 1893. See also *The Meteor* (*u*), and *Dublin Port and Docks Board* v. *Shannon* (*x*), decisions under the above Act.

Dundalk: Pilotage is compulsory for all vessels, in and out, except vessels under 30 tons, and vessels coming in from stress of weather; 18 & 19 Vict. c. 189 (local), ss. 91 *seq.*; for regulations, see Parl. Paper, No. 154, Sess. 1889.

(*t*) *Jones* v. *Bennett*, 6 Asp. M. C. 596.

(*u*) Ir. Rep. 9 Eq. 567.

(*x*) Ir. Rep. 7 C. L. 116.

Dundee: Pilotage free; *infra*, p. 262.

Elgin: See *Lossiemouth.*

Exeter, Falmouth, Fleetwood, and *Fowey:* See *London Trinity House.*

Eyemouth: *Semble,* pilotage free; *infra*, p. 262.

Fraserburgh: Pilotage is compulsory for all vessels of 30 tons or upwards, in or out, except harbour tugs; 41 Vict. c. 51 (local), ss. 116, 117; for bye-laws, see Parl. Paper, No. 154, Sess. 1889; No. 212, Sess. 1892; Ords. in Council, 23rd June, 1891; 17th Feb. 1896.

Gainsborough: See *Kingston-upon-Hull.*

Galway: Pilotage is compulsory inwards and outwards from the roadstead to the docks for all vessels of and over 50 tons, and vessels coming in from stress of weather or contrary winds; 16 & 17 Vict. c. 207 (local), ss. 62 *seq.;* and see 23 & 24 Vict. c. 202 (local). See Ord. in Council, 26th Nov. 1900; Parl. Paper, No. 181 of 1890.

Glasgow: Pilotage is regulated in the Clyde by 21 & 22 Vict. c. 149 (local), ss. 134 *seq.;* and see 53 & 54 Vict. c. 207 (local), Pilotage Order Confirmation Act. It is compulsory for vessels over 60 tons navigating the Clyde between Hutchinsontown Bridge and a straight line drawn from the east end of Newark Castle to Cardross Burn, except vessels under 100 tons in tow of a tug whose master has a pilotage certificate. See Ords. in Council of 12th Sept. 1863; 12th Nov. 1900. The bye-laws are in Parl. Paper, No. 268, Sess. 1901 (*y*).

Gloucester: Pilotage free; see *infra*, p. 263.

Goole: See *Kingston-upon-Hull.*

Grangemouth: Pilotage free; see *infra*, p. 263.

Greenock: 29 & 30 Vict. c. 156 (local); and see *Glasgow.*

Grimsby: See *Kingston-upon-Hull,* and 12 & 13 Vict. c. 81 (local).

Hartlepool: Pilotage appears to be no longer compulsory. See *Newcastle-upon-Tyne.* See also 27 & 28 Vict. c. 58; Ords. in Council of 31st Jan. 1868, 27th June, 1876, 7th Feb. 1888, and 13th May, 1896; for bye-laws, see Parl. paper, No. 290, Sess. 1897.

Harwich (*z*) and *Holyhead:* See *London Trinity House.* The Harwich district includes the river Stour to Mistley.

Hastings: Pilotage free; *infra*, p. 263.

(*y*) See also *The Eden*, 2 W. Rob. 442; *Clyde Navigation Co.* v. *Barclay*, 1 App. Cas. 790.

(*z*) See *The Ole Bull*, (1905) P. 52.

Hull and *Humber:* See *Kingston-upon-Hull.*

Inverness: Pilotage free; see *infra*, p. 263.

Ipswich (*a*)*:* 15 Vict. c. 116 (local). See *London Trinity House.* The Ipswich district includes the river Orwell down to Harwich.

Irvine: It is not clear whether pilotage is compulsory or free. There appears to be no power to make it compulsory; but in the Pilotage Return (Parl. Paper, No. 154, Sess. 1889), it is stated to be so: 36 & 37 Vict. c. 124 (local); for bye-laws, see Parl. Paper, No. 154, Sess. 1889.

Isle of Wight: See *London Trinity House.*

King's Lynn: Pilotage is compulsory, in and out, for all vessels, except vessels under 30 tons; 13 Geo. 3, c. 30 (local); 4 & 5 Vict. c. 47 (local); and except vessels arriving within the Marsh Cut banks without falling in with a pilot; for bye-laws, see Parl. Paper, No. 154, Sess. 1889; No. 160 of 1894; and Ords. in Council of 1st March, 1864; 14th April, 1869; 21st Feb. 1874; 26th March, 1878; 18th March, 1880; 25th July, 1882; 25th Jan. 1887.

Kingston-upon-Hull, Trinity House of: The Trinity House of Hull was incorporated by charters of 23rd Elizabeth and 13th Charles II. (*b*). Its jurisdiction (*c*) includes the river Humber, Hull, Goole, Selby, Grimsby, Gainsborough, Spalding, and Wisbech. It is now regulated by 2 & 3 Will. 4, c. 105 (local); and 12 & 13 Vict. c. 81 (local); see also 17 & 18 Vict. c. 104, s. 387; 6 Geo. 4, c. 125, s. 89. Under the Act of Will. 4, pilotage in the Humber, outwards and inwards, is compulsory for all vessels except coasting vessels, vessels drawing less than 6 feet of water, vessels putting in for shelter, stores, or provisions. Pilotage between Goole and Hull Roads is compulsory except in the case of vessels (1) employed in the regular coasting trade; (2) wholly laden with stone from the Channel Islands, or the Isle of Man, and being the product thereof; (3) not exceeding 150 tons register; (4) not exceeding 10 feet draught of water (Ord. in Council 21st Dec. 1908). Numerous bye-laws have been made in regard to pilotage in the Humber, but the above statement gives the law in regard to compulsory pilotage.

(*a*) *Hadgraft* v. *Hewith*, L. R. 10 Q. B. 350; *The Glanystwyth*, (1899) P. 118.

(*b*) See *The Killarney*, Lush. 427, 436.

(*c*) For the limits of the jurisdiction, see *The Killarney*, *ubi supra*. *Beilby* v. *Raper*, 3 B. & Ad. 284. *Dock Company of Hull* v. *Browne*, 2 B. & Ad. 43.

It has been held that under the local Act (sects. 22, 89) pilotage is not compulsory for a vessel being towed from one part of the port of Hull to another (*d*). But it is compulsory for an inward-bound vessel whilst passing through one dock to her berth in another dock; and not the less so because she has brought up in the river before reaching her berth; and though one pilot brings her in from the sea and another berths her (*e*).

In *The Killarney* (*f*) it was held that pilotage is compulsory for a Goole vessel inward bound to Goole. The compulsion is by virtue of 17 & 18 Vict. c. 104, s. 353, which continues 6 Geo. 4, c. 125, by which (sect. 58) pilotage is compulsory in licensed waters, except (sect. 59) (amongst other exceptions) where a ship is in her home port, being a port for which no "particular provision" as to pilotage had there been made by Act or charter. The exception of sect. 59 does not include Hull, for which provision was made by 52 Geo. 3, c. 39.

Pilotage certificates are granted to the masters and mates of foreign ships by the Trinity House of Hull.

By the original charters the Hull Trinity House was enabled to grant licences to pilot vessels outward bound only. It was doubted by Dr. Lushington, in *The Killarney*, whether the charters empowered the Hull Trinity House to make pilotage compulsory under penalty; but by 52 Geo. 3, c. 39, s. 21, provision was made for granting licences for piloting vessels bound inwards.

Kirkcaldy: Pilotage is compulsory for vessels inward bound under 12 & 13 Vict. c. 30 (local), s. 31; 39 & 40 Vict. c. 179 (local); bye-laws, Parl. Paper, No. 154, Sess. 1889.

Lancaster: Pilotage is compulsory in and out; 47 Geo. 3 (Sess. 2), c. 37 (local); for bye-laws, see Parl. Paper, No. 154, Sess. 1889.

Leith: Pilotage free; see *infra*, p. 263.

Leven and *Methil:* Pilotage free; see *infra*, p. 263.

Limerick: See *infra*, p. 263.

Littlehampton: See *Arundel*.

Liverpool: Pilotage is compulsory inwards and outwards, except for coasters in ballast and coasters under 100 tons;

(*d*) *The Maria*, L. R. 1 A. & E. 358.

(*e*) *The Rigborgs Minde*, 8 P. D. 132.

(*f*) Lush. 427; followed in *The Maria*, *ubi supra*; *The Rigborgs Minde*, 8 P. D. 132. It seems, however, doubtful whether 6 Geo. 4, c. 125, ss. 58, 59, apply to Hull pilotage: see *supra*, p. 251, note (*c*). As to 52 Geo. 3, c. 39, s. 34, applying to Hull pilotage, see *Usher* v. *Lyon*, 2 Price, 118.

21 & 22 Vict. c. 92 (local); 27 & 28 Vict. c. 213 (local), s. 7; and 56 & 57 Vict. c. 36 (local); as to pilots' duties when in the river, see 62 & 63 Vict. c. 172 (local); for bye-laws, see Parl. Paper, No. 154, Sess. 1889; No. 251, Sess. 1891; No. 290, Sess. 1897; Ords. in Council of 30th Jan. 1854; 24th June, 1856; 26th June, 1861; 9th May, 1866; 26th Aug. 1881; 29th June, 1895; 18th July, 1898; 13th May, 1901. By the Ord. in Council of 30th Jan. 1854, coasting steamships outward bound were exempted; whether this exemption was continued by sect. 353 of the Merchant Shipping Act, 1854, and sect. 603 of the Merchant Shipping Act, 1894, or whether it was impliedly repealed by 21 & 22 Vict. c. 92 (local), is not clear (*g*).

Llanelly: Pilotage was formerly compulsory for all vessels with cargo, and for all vessels above 40 tons register in ballast, bound over the Bar of Burry inwards; and for all vessels of 30 tons register with cargo, or of 50 tons register in ballast outward bound. By 62 & 63 Vict. c. 32 (local), pilotage over Lougher and Burry bars appears now to be free. See 53 Geo. 3, c. 183 (local); 6 & 7 Vict. c. 88 (local); 21 & 22 Vict. c. 72 (local); 27 & 28 Vict. c. 203 (local); 59 & 60 Vict. c. 186 (local); 62 & 63 Vict. c. 32 (local); and for bye-laws, see Parl. Paper, No. 154, Sess. 1844; and *The Ruby* (*h*).

London: The principal pilotage authority in the United Kingdom is the Trinity House of Deptford Strond (*i*). Its jurisdiction includes three districts, or classes of districts (*k*). They are (1) The London District, extending from Orfordness, on the north, to Dungeness, on the south, and comprising the Thames and Medway up to London and Rochester Bridges; (2) The English Channel District, extending from Dungeness to the Isle of Wight (*l*); The Trinity Outport Districts, comprising any pilotage district for the appointment of pilots within which no particular provision is made by any Act of Parliament or charter (*m*).

(*g*) Decisions under the Liverpool Act are *The Princeton*, 3 P. D. 90; *The City of Cambridge*, L. R. 4 A. & E. 161; on app. *ibid.* 5 P. C. 451; *The Ocean Wave*, L. R. 3 P. C. 205; *The Annapolis* and *The Johanna Stoll*, Lush. 295; *The Cachapool*, 7 P. D. 217; *The Sussex*, (1901) P. 236; 9 Asp. 578; *The Mercedes de Larrinaga*, (1904) P. 215; 9 Asp. 571; under the former Liverpool Act, *Carruthers* v. *Sydebotham*, 4 M. & S. 77; *Att.-Gen.* v. *Case*, 3 Price, 302; *Rodriguez* v. *Melhuish*, 10 Ex. 110; *The Northampton*, 1 Sp. 152; *The Agricola*, 2 W. Rob. 10; *The Servia*, *The Carinthia*, (1898) P. 36, *supra*, p. 221.

(*h*) 15 P. D. 139, 164.

(*i*) Hereinafter called the London Trinity House.

(*k*) See 17 & 18 Vict. c. 104, s. 370

(*l*) As to this district, see also Isle of Wight, Newhaven, Shoreham.

(*m*) See *Hadgraft* v. *Hewitt*, L. R. 10 Q. B. 350.

At Bridgwater, Ipswich (*n*), and Neath, the London Trinity House is the pilotage authority, and compulsory pilotage is established by special Acts (*o*). Between Orfordness and the Nore the jurisdiction of the London Trinity House is exclusive. The Leith Trinity House, notwithstanding the terms of its charter, and of 1 Geo. 4, c. 37, has no authority to grant pilotage licences for that district (*p*).

The bye-laws of the London Trinity House are set out in Parl. Paper, No. 154, Sess. 1889, and elsewhere, as noted below.

The names of the Trinity Outport Districts are: Aberdovey, Beaumaris, Bridgwater (*q*), Bridport, Caernarvon, Carlisle, Colchester, Dartmouth (*r*), Exeter (*s*), Falmouth (*t*), Fleetwood and Barrow, Fowey, Harwich (*u*), Holyhead, Ipswich (*x*), Isle of Wight (*y*), Lowestoft, Maldon, Milford, Neath (*z*), Newhaven, Padstow, Penzance, Plymouth, Poole (*a*), Portmadoc (*b*), Preston (*c*), Rochester, Rye, St. Ives (Hayle), Scilly, Shoreham, Southampton, Teignmouth, Wells, Weymouth (*d*), Woodbridge (*e*), and Yarmouth (*f*). Their limits are defined in Parl. Paper, No. 154, Sess. 1889 (*g*). It will be found that the districts extend, in many cases, far beyond the limits of the ports from which they are named. For example, the Falmouth and Fowey districts together include the whole of the coast and seas from Looe to the Lizard; and the Yarmouth district includes all harbours and roadsteads from Yarmouth to Orfordness, thence across the Kentish Knock (*i.e.*, on a line running outside or to the eastward of the Knock) to the Downs. Some of the districts are non-exclusive and overlap; the English Channel district appears to include the Newhaven and Shoreham districts.

(*n*) *Hadgraft* v. *Hewith*, *supra*.

(*o*) These Acts are specified in connection with the places to which they relate.

(*p*) *Hossack* v. *Gray*, 12 L. T. 761.

(*q*) See Ord. in Council of 17th May, 1867; 8 & 9 Vict. c. 89 (local).

(*r*) See Ord. in Council of 12th Aug. 1859.

(*s*) See Ord. in Council of 4th Nov. 1857.

(*t*) See *The Juno*, 1 P. D. 135; Parl. Paper, No. 251, Sess. 1891.

(*u*) Ord. in Council of 19th Nov. 1852. See *The Ole Bull*, (1905) P. 52; 10 Asp. 84.

(*x*) 15 Vict. c. 116 (local), under which coasters under 50 tons are exempt. And see *Hadgraft* v. *Hewith*, L. R. 10 Q. B. 350.

(*y*) Ord. in Council, 23rd April, 1844; Parl. Paper, No. 251, Sess. 1891.

(*z*) 6 & 7 Vict. c. 71 (local); Parl. Paper, No. 160, Sess. 1894.

(*a*) Parl. Paper, No. 160, Sess. 1894.

(*b*) Ord. in Council, 14th April, 1840.

(*c*) Parl. Paper, No. 160, Sess. 1894.

(*d*) See Ord. in Council, 6th June, 1859.

(*e*) Ord. in Council, 24th April, 1846.

(*f*) See *The Earl of Auckland*, Lush. 387.

(*g*) These divisions form one district for the purpose of compulsory pilotage. See *The Assaye*, (1905) P. 289; 10 Asp. 183.

The production of evidence that the Trinity House was accustomed to license pilots for the district at and previous to the passing of 17 & 18 Vict. c. 104, is sufficient proof that the district is an outport district within sect. 370 of the same Act (*h*).

Orders in Council approving bye-laws of the London Trinity House, by which various classes of ships are exempted from compulsory pilotage, and providing for the granting of pilotage certificates to masters and mates, are of the following dates:—

19th Aug. 1836, reduction of rates for ships in tow;

13th Dec. 1843, 3rd. Sept. 1844, 8th Aug. 1845, all exempt certain foreign ships of less than 60 tons in the Humber and Tyne, and in all other ports: (these are all obsolete);

18th Feb. 1854 (*i*), exemption of ships trading to Norway, &c., between Boulogne, &c., passing through a pilotage district;

1st May, 1855, watermen pilots between London and Gravesend;

1st May, 1855, pilotage certificates for masters and mates;

21st Nov. 1855, exemption of ships in ballast;

16th July, 1857, ships with masters having pilotage certificates exempt;

16th July, 1857, similar exemption for other ships of same owners;

25th July, 1861, ships in ballast exempt;

1st Nov. 1862, rates, London and English Channel districts;

21st. Dec. 1871 (*k*), extension (Brest substituted for Boulogne) of exemption created by Merchant Shipping Act, 1854, s. 379;

5th Feb. 1873, rates between London and Gravesend lowered;

5th Feb. 1873, oversea pilotage licences;

6th Sept. 1880, pilots for exempt ships between the Nore and Rochester;

6th Sept. 1880, lower rates between the Nore and Rochester may be taken:

17th May, 1882, rates, London and English Channel districts;

(*h*) *The Juno*, 1 P. D. 135. At Falmouth the limits of the district have been extended so as to include the anchorage outside. It has been doubted whether compulsory pilotage can be so extended: see note, *supra*, p. 247, n. (*u*).

(*i*) Made under 16 & 17 Vict. c. 129, s. 21.

(*k*) In the case of a line of steamers running from London to Japan, back to London, thence to European ports north of Boulogne, and so back to London, it was held that pilotage is free for the voyage with a crew of runners from London to Holland: *Courtney* v. *Cole*, 19 Q. B. D. 147, followed in *The Rutland*, [1897] App. Cas. 333; dist. *The Winestead*, [1895] P. 170.

28th Nov. 1899, and 27th Dec. 1899, pilotage rates ;
11th June, 1902, pilots' qualifications.

In the London District and Outport Districts pilotage is expressly made compulsory by 57 & 58 Vict. c. 60, s. 622 (1). In the English Channel District (except such parts of it as are within the Newhaven, Shoreham, and Isle of Wight districts) pilotage is free. There are, however, large classes of ships for which pilotage is free in the compulsory districts. Besides the ships free under the general exemptions mentioned above, the following are exempt in the London district (*l*) :—British ships on their inward or outward voyage from or to the Cattegat or White Sea, or any place in or between them, whether using the north or south channels of the Thames ; British ships being constant traders to or from ports between Boulogne (inclusive) and the Baltic ; British ships passing on their voyage through any pilotage district, and not anchoring therein ; ships sailing from Dover, Deal, or the Isle of Thanet, up or down the Thames or Medway or into or out of any place within the jurisdiction of the Cinque Ports, and owned wholly or in part by master or mate residing in Dover, Deal, or the Isle of Thanet. All these are exempt under 57 & 58 Vict. c. 60, s. 603, which continues the exemptions created and continued by 17 & 18 Vict. c. 104, s. 353 ; 6 Geo. 4, c. 125, ss. 59, 62 ; and an Order in Council of the 18th February, 1854 (*m*) ; but vessels on voyages between Sweden or Norway and the port of London, so far as they were exempted by any of these Acts or Order, are no longer so exempt (*n*).

(*l*) All these exemptions must be taken to be subject to 17 & 18 Vict. c. 104, s. 354, and 57 & 58 Vict. c. 60, s. 604 (1), which impose compulsory pilotage on ships carrying passengers between places in the United Kingdom or adjacent islands : see *The Temora*, Lush. 17 ; cf. *The Warsaw*, (1898) P. 127.

(*m*) See *Reg.* v. *Stanton*, 8 E. & B. 445 ; *The Earl of Auckland*, Lush. 164, 387 ; *The Moselle*, 2 Asp. M. C. 586 ; *The Wesley*, Lush. 268 ; *The Hanna*, L. R. 1 A. & E. 283. The last case, followed in *The Vesta*, 7 P. D. 240, establishes the distinction, indicated in the text, between British and foreign ships. As to the existence of this distinction, notwithstanding 24 & 25 Vict. c. 47, see *infra*. See *per* Sir R. Phillimore, *The Vesta*, *ubi supra*, as to the clumsy language of the Order in Council of 18th February, 1854. As to the last class of ships mentioned in the text, see *Williams* v. *Newton*, 14 M. & W. 747 ; *Peake* v. *Screech*, 7 Q. B. 603. As to constant traders, see *The Cayo Bonito*, (1902) P. 216, where a new ship on her second trip was held to be such. The Act 16 & 17 Vict. c. 129, does not appear to have repealed 6 Geo. 4, c. 125, s. 62.

(*n*) 60 & 61 Vict. c. 61. What may be the effect of this Act is not clear. In *The Columbus*, 8 Asp. M. C. 488, it was held that, by 57 & 58 Vict. c. 60, s. 625, a foreign ship without passengers, on a voyage from Christiania to London, was exempt, notwithstanding the Act of 1897.

The following ships, whether British or foreign, are exempt in the London and Outport Districts: (A) coasters, ships of and under 60 tons, stone ships from the Channel Islands, ships navigating within their home ports (*o*); (B) ships in ballast, on a voyage between places in the United Kingdom (*p*); (C) ships trading between Great Britain, the Channel Islands, or the Isle of Man, and any place in Europe (*q*), north of Boulogne (*r*), or between Brest (inclusive) and Boulogne (*s*); (D) ships passing through the limits of any pilotage district, not being bound to any place in such district or anchoring therein (*t*). Notwithstanding the words of 57 & 58 Vict. c. 60, s. 625, purporting to exempt some of these ships "when not carrying passengers," these words do not restrict the extent of the exemption (*u*), and the ship is exempt although she has passengers on board.

The exemptions created by the general Acts (*supra*, p. 242) apply in the London Trinity House districts as elsewhere; similarly, vessels in the London Trinity House districts are subject to the general obligation to take a pilot when carrying passengers between places in the British Islands (*supra*, p. 243).

The London Trinity House grants licences to masters and

(*o*) As to (A), see 57 & 58 Vict. c. 60, s. 625; 17 & 18 Vict. c. 104, s. 379. As to coasters, see *The Lloyds* or *The Sea Queen*, Br. & Lush. 359; *The Agricola*, 2 W. Rob. 10; *Courtney* v. *Cole*, 19 Q. B. D. 447; *The Rutland*, (1897) App. Cas. 333, *supra*, p. 255; *The Winestead*, (1895) P. 170; followed in *The Glanystwyth*, (1899) P. 118. As to ships within their home port, where the port is London, and as to the limits of the port of London, *The Stettin*, Br. & Lush. 199, and *General Steam Navigation Co.* v. *British and Colonial Steam Navigation Co.*, L. R. 3 Ex. 330; *ibid.* 4 Ex. 238; *The Hankow*, 4 P. D. 197, *supra*, p. 244. See also *The Killarney*, Lush. 427.

(*p*) As to the class (B), see Orders in Council of 21st Nov. 1855, and 25th July, 1861.

(*q*) "Europe" is exclusive of Great Britain (*semble*); see *The Winestead*, (1895) P. 170, 175; *The Glanystwyth*, (1899) P. 118.

(*r*) As to ships from Sweden or Norway to London, see 60 & 61 Vict. c. 61, and observations on the last page.

(*s*) As to (C), see 17 & 18 Vict. c. 104, s. 379; 57 & 58 Vict. c. 60, s. 603; Order in Council of 21st Dec. 1871; *The Wesley*, Lush. 268; *The Lion*, L. R. 2 P. C. 525; *The Hanna*, L. R. 1 A. & E. 283; *Courtney* v. *Cole*, 19 Q. B. D. 447; *The Rutland*, (1896) P. 281; affirmed (1897) App. Cas. 333; *The Clymene*, (1897) P. 295; *The Winestead*, (1895) P. 170, *supra*, p. 255. The words "trading to" do not confine the exemption to ships bound to or from one of the London Trinity House pilotage districts. Thus a steamship bound from Liverpool to Hamburg was in collision off Dungeness. She took a pilot when going up the London river for repairs, and got into collision again in the Thames. It was held that she came within the exemption of sect. 379, that pilotage was not compulsory for her, and that her owners were liable: *The Sutherland*, 12 P. D. 154.

(*t*) As to (D), see Order in Council of 18th Feb. 1854, and 17 & 18 Vict. c. 104, s. 379.

(*u*) *Reg.* v. *Stanton*, *ubi supra*; *The Earl of Auckland*, *ubi supra*; both decided under the corresponding words of 17 & 18 Vict. c. 104, s. 379.

mates of certain passenger ships, both British and foreign, to pilot different ships belonging to the same owner (*x*). A vessel of which the master or mate has such a certificate is, therefore, exempt from compulsory pilotage.

Licences for over-sea pilotage (*i.e.*, beyond the limits of its jurisdiction) are granted by the London (*y*), and also by the Hull, Trinity Houses. Pilotage with such licences is voluntary (*z*).

The power given to the London Trinity House by 6 Geo. 4, c. 125, s. 51, to make regulations as to the pilotage of foreign vessels bringing provisions, does not appear to have been exercised.

Londonderry: Pilotage is compulsory on all vessels inwards and outwards, except vessels of and under 75 tons and colliers outward bound in ballast; 48 Geo. 3, c. 136 (local), s. 23; 17 & 18 Vict. c. 177 (local), ss. 68 *seq.*; for bye-laws, see Parl. Paper, No 154, Sess. 1889.

Lossiemouth: Pilotage is compulsory inwards and outwards for all vessels over 40 tons; 19 & 20 Vict. c. 67 (local), s. 57; 31 & 32 Vict. c. 47 (local); for regulations, see Parl. Paper, No. 154, Sess. 1889.

Lowestoft, *Maldon*, *Milford*, *Neath*, *Newhaven*, *Padstock*, and *Penzance:* See *London Trinity House*.

Macduff: Pilotage free; see *infra*, p. 263.

Middlesbrough: See *infra*, *Newcastle*.

Montrose: Pilotage free; *infra*, p. 263.

Nairn: Pilotage free (*semble*); *infra*, p. 263.

New Ross: Whether pilotage is free or compulsory is doubtful. At *Waterford* it is compulsory; and the two authorities are not entirely distinct. See 24 & 25 Vict. c. 140 (local); 37 & 38 Vict. c. 116 (local); bye-laws, Parl. Paper, No. 154, Sess. 1889; No. 210, Sess. 1896; No. 265, Sess. 1900.

Newcastle-upon-Tyne, *Tyne*, and *Tees:* The jurisdiction of the Trinity House of Newcastle-upon-Tyne (*a*) includes Blyth, Seaham, North Sunderland, Holy Island, Whitby, Warkworth, Amble, and Alnmouth. It formerly included the river Tyne and the river Tees, and the ports of Hartlepool and Sunderland; but now by 28 & 29 Vict. c. 44 (the Tyne Pilotage Order Confirmation Act), amended by 30 & 31 Vict. c. 78, pilotage juris-

(*x*) Order in Council of 16th July, 1857.

(*y*) See Order in Council of 20th Nov. 1873.

(*z*) But *quære* if such a pilot were to supersede an unlicensed pilot under 51 & 52 Vict. c. 68, s. 5.

(*a*) See 57 & 58 Vict. c. 60, s. 632.

diction over the whole of the river Tyne, and seawards over a radius of seven miles (including the ports of Tynemouth, Newcastle, and Shields), has been transferred to the Tyne Pilotage Commissioners. Within that jurisdiction, except for ships carrying passengers between places in the United Kingdom (*b*), pilotage is not compulsory (*c*). By 2 Edw. 7, c. 76 (local), foreign ships are exempt notwithstanding 41 Geo. 3, c. 86 (local). By similar Acts (27 & 28 Vict. c. 58; 28 & 29 Vict. c. 59, and 45 Vict. c. 1 (local)), pilotage jurisdiction over the ports of Hartlepool and Sunderland, and over the whole of the Tees, including the ports of Stockton and Middlesbrough, was transferred from the Trinity House of Newcastle-upon-Tyne to the Hartlepool Pilotage Commissioners, the Sunderland Pilotage Commissioners, and the Tees Pilotage Commissioners, and pilotage is not, it would seem, compulsory within those jurisdictions (*d*). Under 41 Geo. 3, c. 86 (local), pilotage was compulsory on foreign ships (*e*) within the jurisdiction of the Trinity House of Newcastle-upon-Tyne, except, it seems, foreign coasters, as to which see 39 & 40 Vict. c. 36, s. 141; but foreign ships are now exempt by 2 Edw. 7, c. 76 (local). The existing bye-laws have been made by the following Orders in Council: For Newcastle-upon-Tyne, 14th Feb. 1883; for the Tyne, 19th July, 1862; 17th June, 1887; 6th Feb. 1892; for Hartlepool, 27th June, 1876, and 7th Feb. 1888; for Sunderland, 29th June, 1882, and 8th March, 1886; and for the Tees, 16th Dec. 1882; 2nd Feb. 1899. See Parl. Paper, No. 154, Sess. 1889; No. 263, Sess. 1893; No. 290, Sess. 1897; No. 265, Sess. 1900.

Newport (*Mon.*): Pilotage free; *infra*, p. 263.

Newry: Pilotage free; see *infra*, p. 263.

Penarth: Pilotage free; *infra*, p. 263.

Peterhead: Pilotage is compulsory under 36 & 37 Vict. c. 157 (local), ss. 77 *seq.*, for all vessels of 30 tons and upwards bound in and out, except steam-tugs for the use of vessels frequenting the harbour. See Ords. in Council of 1st April, 1881; 17th Feb.

(*b*) *The Warsaw*, (1898) P. 127.

(*c*) See sect. 16 of the schedule to the Act, and *The Johann Sverdrup*, 11 P. D. 49; 12 P. D. 43.

(*d*) Sect. 16 of the schedule to the Hartlepool Act, sect. 14 of the schedule to the Sunderland Act, and sect. 15 of the schedule to the Tees Act, are nearly identical in terms with sect. 16 of the schedule to the Tyne Act, adjudicated upon in *The Johann Sverdrup*, *ubi supra*.

(*e*) *The Maria*, 1 W. Rob. 95; *Tyne Improvement Commissioners* v. *General Steam Navigation Co.*, L. R. 2 Q. B. 65; *The Holar*, (1901) P. 7 (at Blyth). 24 & 25 Vict. c. 47, did not relieve foreign ships from the obligation to take a pilot. See *The Vesta*, 7 P. D. 240.

1896; 39 & 40 Vict. c. 174 (local); and for bye-laws, Parl. Paper, No. 154, Sess. 1889.

Plymouth and *Poole:* See *London Trinity House.*

Port Talbot (formerly *Aberavon*): Pilotage was formerly compulsory, but appears now to be free; 4 Will. 4, c. 43 (local), s. 73; bye-laws, Parl. Paper, No. 268, Sess. 1901.

Porthcawl: Pilotage free; *infra*, p. 263.

Portmadoc, Rye, Scilly, and *Shoreham:* See *London Trinity House.*

Pulteney: Pilotage is compulsory for vessels over 40 tons in and out; 20 & 21 Vict. c. 93 (local), ss. 52, 54. See also *Wick.*

Rosehearty: In the pilotage returns pilotage is stated to be compulsory; but there appears to be nothing in the Acts or bye-laws to make it so; see 26 & 27 Vict. c. 104; 38 & 39 Vict. c. 117 (local); Parl. Paper, No. 154, Sess. 1889.

Rosslare: See *Wexford.*

St. Ives (*Hayle*): See *London Trinity House.*

Sandhaven: In the pilotage return pilotage is stated to be compulsory, and the bye-laws imply the same; but there appears to be no express provision in the Acts or bye-laws to that effect, and the bye-laws are made under the Merchant Shipping Act, 1854, s. 333; see 36 & 37 Vict. c. 63 (local); Ord. in Council, 20th March, 1877; Parl. Paper, No. 154, Sess. 1889.

Sligo: Pilotage is compulsory for inward-bound ships of 20 tons and upwards, except vessels reaching Oyster Island without being boarded; 40 Vict. c. 35 (local); for regulations, see Parl. Paper, No. 263, Sess. 1893; Ords. in Council, 9th May, 1892, and 30th April, 1894.

Southampton: See *London Trinity House.*

Southwold: Pilotage is compulsory, inwards and outwards, for vessels of 40 tons and upwards; 11 Geo. 4, c. 48 (local); for bye-laws, see Parl. Paper No. 204 of 1874.

Spalding: See *Kingston-upon-Hull.*

Stockton: See *Newcastle-upon-Tyne.*

Stonehaven: Pilotage is stated, Parl. Paper, No. 210, Sess. 1896, to be partly compulsory; but there is nothing in the local Acts or bye-laws to make it so; see 6 Geo. 4, c. 54 (local); 45 & 46 Vict. c. 168 (local); Parl. Paper, No. 154, Sess. 1889.

Sunderland, North: See *Newcastle-upon-Tyne;* 28 & 29 Vict. c. 59; Ords. in Council, 29th June, 1882, and 8th March, 1886; bye-laws, Parl. Paper, No. 154, Sess. 1889.

Swansea: Pilotage is compulsory for vessels inward bound, except vessels under 100 tons in ballast; 17 & 18 Vict. c. 126 (local); Ords. in Council of 22nd Feb. 1860; 4th Feb. 1861;

7th Jan. 1864; 22nd May, 1883; and 28th Nov. 1899; for bye-laws, see Parl. Paper, No. 265, Sess. 1900; 54 Vict. c. 47 (local); 55 & 56 Vict. c. 31 (local). The effect of the general and local Acts and of the bye-laws is by no means clear.

Tees (River): See *Newcastle-upon-Tyne*; 55 & 56 Vict. c. 1 (local); 61 & 62 Vict. c. 41 (local).

Teignmouth, Thames: See *London Trinity House*.

Thurso: Pilotage is not expressly made compulsory by the local Act or by bye-law; 4 & 5 Vict. c. 1 (local); Ord. in Council, 12th Dec. 1894.

Tralee: Pilotage appears to have been compulsory under 9 Geo. 4, c. 118 (local), for vessels over 30 tons (see s. 74); but the Act does not in terms make it compulsory. See also 6 & 7 Will. 4, c. 114 (local); 27 & 28 Vict. c. 31 (local); bye-laws, Parl. Paper, No. 154, Sess. 1889.

Tyne: See *Newcastle-upon-Tyne*.

Tweed (River): Ord. in Council, 18th July, 1898.

Waterford: Pilotage is compulsory in and out; 9 & 10 Vict. c. 292 (local); 37 & 38 Vict. c. 116, ss. 12 *seq.*; except for vessels drawing less than 6 feet; for bye-laws, see Parl. Paper, No. 154, Sess. 1889; No. 181, Sess. 1890; No. 160, Sess. 1894; Ords. in Council, 12th Jan. 1891 (*f*); 3rd Feb. 1898; 11th Aug. 1902.

Wells: See *London Trinity House*.

Westport: Pilotage is compulsory for all vessels, in or out, except within the limits of the out-pilot grounds, or when the master is licensed; 16 & 17 Vict. c. 185 (local), ss. 13 *seq.*; see Parl. Paper, No. 154, Sess. 1889.

Wexford: Pilotage is compulsory for all vessels, in or out, with cargo or passengers, except those to or from Rosslare; 37 & 38 Vict. c. 40 (local), ss. 73 *seq.*; see also 25 & 26 Vict. c. 122 (local); Rosslare, 60 & 61 Vict. c. 157 (local); bye-laws approved by Ord. in Council, 26th Oct. 1875; Parl. Paper, No. 154, Sess. 1889.

Weymouth: See *London Trinity House*.

Wick: Pilotage is compulsory for vessels over 20 tons entering and leaving the harbour, except frequent traders whose masters or mates have pilotage certificates (*g*); 25 & 26 Vict. c. 180 (local), ss. 10, 22, 23, 24; see also 20 & 21 Vict. c. 93; for bye-laws, see Parl. Paper, No. 263, Sess. 1893.

(*f*) See *The Victoria*, Ir. Rep. A. 1 Eq. 336.

(*g*) This seems to be the effect of the local Acts; but their language is not clear.

Wicklow: Pilotage is compulsory, in and out, except for steamships in certain cases; 5 & 6 Vict. c. 111 (local), ss. 134 *seq.*; and see 14 & 15 Vict. c. 121 (local).

Wisbech: See *Kingston-upon-Hull;* and see 50 Geo. 3, c. 206 (local); Parl. Paper, No. 154, Sess. 1889; No. 160, Sess. 1889; Ords. in Council, 29th Jan. 1889; 30th Jan. 1893.

Woodbridge, Yarmouth (*h*): See *London Trinity House.*

Pilotage authorities exist at the following places, but at all of them pilotage is free. Information concerning those marked with an asterisk, and bye-laws, where they exist, will be found in Parl. Paper, No. 154, Sess. 1889 (Pilotage Return):—

Ballyshannon: Ord. in Council, 15th Oct. 1889; Parl. Paper, No. 181, Sess. 1890; No. 251, Sess. 1891. *Barry:* Parl. Paper, No. 265 of 1900; Ord. in Council, 21st Oct. 1890. *Berwick*:* 48 Geo. 3, c. 104 (local); 25 Vict. c. 31 (local); Ord. in Council, 18th July, 1898; bye-laws, Parl. Paper, No. 247, Sess. 1899. *Borrowstounness*:* 38 & 39 Vict. c. 137 (local); 46 & 47 Vict. c. 76 (local); Ord. in Council, 26th June, 1886. *Buckie* (*Cluny*): 37 & 38 Vict. c. 185 (local). *Burghead*:* 21 & 22 Vict. c. 39 (local); Ord. in Council, 17th May, 1888. *Burntisland*:* 44 & 45 Vict. c. 85 (local). *Cardiff,** including *Penarth:* Ords. in Council, 20th Oct. 1874; 20th April, 1883; 21st Oct. 1890; 7th Aug. 1900; 12th Nov. 1900; 11th Aug. 1902; bye-laws, Parl. Paper, No. 268, Sess. 1901; 24 & 25 Vict. c. 236 (local), repealing 19 & 20 Vict. c. 122 (local): *quære,* whether, under sect. 31 of this Act, pilotage is compulsory for a ship "bound foreign" from Penarth with passengers; 43 & 44 Vict. c. 24 (local). *Carlingford Bar*:* 27 & 28 Vict. c. 93; Ord. in Council of 16th May, 1878. *Charlestown:* 22 & 23 Vict. c. 96 (local); Ord. in Council, 8th Feb. 1890; Parl. Paper, No. 251, Sess. 1891. *Coleraine*:* 42 & 43 Vict. c. 175 (local); 48 & 49 Vict. c. 185 (local); Ord. in Council, 25th Jan. 1887. *Cork** (*i*): 1 Geo. 4, c. 52 (local); 55 & 56 Vict. c. 157 (local); Ord. in Council, 7th Oct. 1899; Parl. Paper, No. 160, Sess. 1894; No. 265, Sess. 1900. *Dingle*:* 48 & 49 Vict. c. 104 (local); Ord. in Council, 26th June, 1886; Parl. Paper, No. 261, Sess. 1891. *Douglas* (*Isle of Man*): 35 & 36 Vict. c. 23. *Dundee*:* 38 & 39 Vict. c. 150 (local). *Eyemouth:* 37 & 38 Vict. c. 185 (local); 45 & 46 Vict. c. 58 (local), ss. 50—

(*h*) As to the limits of the Yarmouth district, see *supra*, p. 254.

(*i*) See *The Eden*, 2 W. Rob. 442; Cork Harbour Pilotage Act, 1892, s. 3.

56 (*semble*, free). *Gardenstown:* 39 & 40 Vict. c. 40 (local). *Gloucester*:* 24 & 25 Vict. c. 236 (local); bye-laws, Parl. Paper, No. 268, Sess. 1901; Ords. in Council, 28th Nov. 1874; 17th Sept. 1900. *Grangemouth:* 49 & 50 Vict. c. 76 (local); Ord. in Council, 19th Feb. 1889; bye-laws, Parl. Paper, No. 212, Sess. 1892. *Hastings:* 25 & 26 Vict. c. 51. *Inverness*:* 46 & 47 Vict. c. 43 (local); Ord. in Council, 5th July, 1889; Parl. Paper, No. 181, Sess. 1890. *Leith Harbour and Docks*:* 28 Geo. 3, c. 58 (local); 38 & 39 Vict. c. 160 (local); Ords. in Council of 28th July, 1856; 30th June, 1860. *Leith Trinity House* (k):* 1 Geo. 4, c. 37; 5 Geo. 4, c. 39 (local); Parl. Paper, No. 263, Sess. 1893; No. 160, Sess. 1894; Ord. in Council, 28th July, 1856. *Leven and Methil*:* 39 & 40 Vict. c. 173 (local); Parl. Paper, No. 251, Sess. 1891; 46 & 47 Vict. c. 43 (local); 52 & 53 Vict. c. 90 (local), ss. 34, 38; Ords. in Council, 25th Jan. 1887; 8th Feb. 1890; superseding, it seems, that of 25th Jan. 1887. *Limerick:* 4 Geo. 4, c. 94 (local); 10 & 11 Vict. c. 198 (local); Ord. in Council, 19th Nov. 1902; sect. 73 of the former Act imposes a penalty on persons who, having taken charge of a ship arriving off the port, refuse to deliver over the charge of her to a pilot appointed by the commissioners who offers himself on the ship passing certain headlands there mentioned: *quære*, whether this enables a pilot to take the charge of the ship out of her officers' hands? *Macduff:* 10 & 11 Vict. c. 127 (local); 38 & 39 Vict. c. 117 (local); there are no bye-laws, and nothing in the local Act to make pilotage compulsory. *Manchester Ship Canal:* 48 & 49 Vict. c. 188 (local); Ord. in Council, 26th Nov. 1895 (Art. 3); bye-laws, *infra*, p. 523. *Montrose:* Stated in Parl. Paper, No. 312, Sess. 1902, pilotage free; bye-laws, Parl. Paper, No. 181, Sess. 1890. *Nairn*:* 26 & 27 Vict. c. 104; bye-laws, Parl. Paper, No. 265, Sess. 1900. *Newcastle-upon-Tyne:* See above, p. 258. *Newport (Mon.)*:* 24 & 25 Vict. c. 236 (local); 56 & 57 Vict. c. 36 (local), Pilotage Orders Confirmation Act; Ords. in Council, 14th July, 1899; 21st Nov. 1902; Parl. Paper, No. 210, Sess. 1896; No. 265, Sess. 1900. *Newry*:* 10 Geo. 4, c. 126 (local); Ord. in Council, 16th May, 1878. *Penarth:* 19 & 20 Vict. c. 122 (local); see above, *Cardiff*. *Porthcawl** or *Pwll Cawl Bay:* 18 Vict. c. 50 (local); Parl. Paper, No. 154, Sess. 1889; Ords. in Council, 6th May, 1857, and 27th Nov. 1878. *Port Talbot:*

(*k*) The Leith Trinity House was incorporated by charter of 27th July, 1797. As to the limit of its jurisdiction, see *Hossack* v. *Gray*, 6 Br. & S. 598.

4 Will. 4, c. 43 (local); 57 & 58 Vict. c. 141 (local); bye-laws, Parl. Paper, No. 268, Sess. 1901. *Rosehearty*:* See above, p. 260. *Sandhaven*:* See above, p. 260. *Stonehaven*:* 6 Geo. 4, c. 54 (local); 45 & 46 Vict. c. 168 (local). *Thurso:* 4 & 5 Vict. c. 7 (local); Ord. in Council, 12th Dec. 1894 (see above, p. 261). *Hartlepool*, *Sunderland*, and *Tees river*, see above, pp. 258, 259.

CHAPTER XI.

COLLISION WITH REFERENCE TO—(1) THE SHIPOWNER'S LIABILITY AS CARRIER—(2) THE CONTRACT OF INSURANCE.—CRIMINAL AND OTHER CONSEQUENCES OF COLLISION.

THE liability of the shipowner for loss by collision of goods on board his ship may be considered under two heads: (1) his liability at common law by the custom of the realm; (2) his liability upon the contract of carriage. A common hoyman (*a*), the owner of barges, flats or lighters, who lets them out for hire (*b*), the owner of a general ship trading between places within the realm or to foreign lands (*c*), are subject to the liability of a common carrier. Whether the owner of a ship that is not a general ship, and trades to foreign lands, is a common carrier or liable as such, is doubtful (*d*). Again, whether the owner of a general ship is liable as a common carrier, except so far as he is protected by the contract, where he carries goods under a bill of lading, has been much disputed (*e*). It appears to be now decided that he is not (*f*).

Whether shipowner a common carrier.

At common law, where the shipowner is subject to the liability of a common carrier, he is liable as insurer against loss or damage from any cause except the act of God and the King's enemies (*g*). For injury to passengers on board his

Shipowner's liability at common law

(*a*) *Forward* v. *Pittard*, 1 T. R. 27.

(*b*) *Dale* v. *Hall*, 1 Wils. 281; *Lyon* v. *Mells*, 5 East, 428; *Liver Alkali Co.* v. *Johnson*, L. R. 9 Ex. 338.

(*c*) *Mors* v. *Slue*, 1 Ventr. 190, 238. See on this case *per* Blackburn, J., L. R. 9 Ex. 341; *per* Cockburn, C. J., 1 C. P. D. 430; *Barclay* v. *Cuculla y Gana*, 3 Dougl. 389.

(*d*) See *Liver Alkali Co.* v. *Johnson*, *ubi supra*; *Nugent* v. *Smith*, 1 C. P. D. 19; *ibid.* 423; *Chartered Mercantile Bank of India, London, and China* v. *Netherlands India Steam Navigation Co.*, 10 Q. B. D. 521.

(*e*) See 1 Parsons on Shipping, pp. 245 *seq.*, ed. 1869, where the writer states that he is not so liable.

(*f*) *Nugent* v. *Smith*, 1 C. P. D. 19, 423; but see *per* Pollock, B., *Chartered Mercantile Bank of India, London, and China* v. *Netherlands India Steam Navigation Co.*, 9 Q. B. D. 118; *Hayn* v. *Culliford*, 4 C. P. D. 182.

(*g*) *Nugent* v. *Smith*, 1 C. P. D. 19; *ibid.* 423.

ship he is liable only where it is caused by the negligence of himself or his agents, the officers or crew (*h*). To passengers, therefore, he is liable for injury in a collision caused by the fault of his own ship, or by the fault of both ships. To cargo-owners he is liable at common law for loss or damage in a collision by the fault of his own or of both ships, or where it is an inevitable accident. It is possible that a collision might occur by act of God, in which case he would not be liable. But the ordinary so-called case of collision by inevitable accident, as where it is caused by stress of weather, fog, or latent defect in gear, would not be held to be an act of God (*i*).

It has been held in America that owners of a tug towing craft with goods on board are not liable as common carriers for the safety of the goods (*k*).

Shipowner's liability on the contract of carriage.

In practice the shipowner carrying goods usually contracts himself out of the onerous liability imposed on him by the common law. By the charter-party or bill of lading it is usually agreed that the goods shall be carried and delivered in good order, unless loss or damage shall arise from certain specified causes. These causes, technically called "exceptions," are now very numerous, and commonly include "perils, dangers, and accidents of the seas, rivers, land, carriage, and steam navigation, of whatsoever nature and kind." Under a bill of lading so framed the shipowner is not liable for a collision which occurs without negligence in either ship (*l*), or for a collision caused wholly by the fault of the other ship (*m*); but he is liable where there is negligence in his own ship. Sometimes in the bill of lading there is contained an exception of "collision." In that case the shipowner is not liable for a collision caused by the fault of the other ship (*n*); but he remains liable for a collision caused by the

Exception of "collision" in bill of lading.

(*h*) See *Redhead* v. *Midland Rail. Co.*, L. R. 2 Q. B. 412; on app. *ibid.* 4 Q. B. 379, and the cases there cited.

(*i*) See *Nugent* v. *Smith*, 1 C. P. D. 19, 34, as to what is an act of God.

(*k*) *Caton* v. *Rumney*, 13 Wend. 387. This seems to be the general rule, but there are contrary decisions. See 1 Parsons on Shipping (ed. 1869), 247, note.

(*l*) *Buller* v. *Fisher*, 3 Esp. 67; *Chartered Mercantile Bank of India, London, and China* v. *Netherlands India Steam Navigation Co., Limtd.*, 10 Q. B. D. 521.

(*m*) *Wilson, Sons & Co.* v. *Owners of Cargo per Xantho, The Xantho*, 12 App. Cas. 503, overruling *Woodley* v. *Michell*, 11 Q. B. D. 47.

(*n*) *Lloyd* v. *General Iron Screw Collier Co.*, 3 H. & C. 284; *Grill* v.

fault of his own ship. The reason for his liability for a collision, caused wholly or in part by the fault of his own ship, is that "underlying the contract implied or involved in it (the bill of lading) is . . . an engagement on his part to use due care and skill in navigating the ship and carrying the goods" (*o*). But he ceases to be liable if he limits the general liability, as where the charter-party or bill of lading excepts a collision, even if caused by "any act, neglect, or default whatsoever, of the pilot, master, or mariners, or other servants of the shipowner in navigating the ship." These words cover loss in a collision caused by the fault of the carrying ship; but not loss by a collision with another ship of the same owners caused entirely by the fault of such ship (*p*). The exception holds good even though the ship is unseaworthy at the beginning of the voyage if the damage is caused by an excepted peril such as a collision (*q*). Other exceptions.

An exception of "dangers of accidents of navigation" in a bill of lading covers loss of cargo by collision caused by the fault of the other ship (*r*).

The Bernina was in collision partly by her own fault. Goods on board were in consequence of the collision transhipped to another ship, and whilst being carried on to their destination were lost by the fault of those on board the carrying ship. It was held that an exception in the original bill of lading, "act of God, Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation," did not cover the loss (*s*).

In the case of a collision between the carrying ship and another belonging to the same owners, the effect of the exception last mentioned, together with the statutory rule as to division of loss where both ships are in fault (36 & 37 Collision between ships of the same owner.

General Iron Screw Collier Co., L. R. 1 C. P. 600; on app. *ibid.* 3 C. P. 476; *Woodley* v. *Michell*, 11 Q. B. D. 47; *Chartered Mercantile Bank, &c.* v. *Netherlands India Steam Navigation Co.*, 10 Q. B. D. 521, 531.

(*o*) *Per* Lord Macnaghten, *The Xantho*, 12 App. Cas. 503, 515.

(*p*) *Chartered Mercantile Bank, &c.* v. *Netherlands India Steam Navigation Co.*, 10 Q. B. D. 521. Except, perhaps, where there is negligence on the part of the owner in appointing an incompetent master or crew. See *per* Brett, M. R., 10 Q. B. D. 532.

(*q*) *The Europa*, [1908] P. 84; 11 Asp. 19.

(*r*) *Sailing Ship Garston Co.* v. *Hickie, Borman & Co.*, 18 Q. B. D. 17.

(*s*) *The Bernina* (No. 2), 12 P. D. 36.

Vict. c. 66, s. 25, sub-s. 9), is to relieve the shipowner from making good to the cargo-owner more than half his loss. He is liable as carrier for half, and for half only, of the loss on the goods (*t*).

The case (*u*) which decided these points was as follows:— A collision occurred between *The Crown Prince* and *The Atjeh*, a ship belonging to the owners of *The Crown Prince*, by the fault of both ships. The question arose whether the shipowners were liable to the owners of cargo shipped on board *The Crown Prince* under a bill of lading containing exceptions of, amongst other things, "collision," and "accidents, loss, or damage from any act, neglect, or default whatsoever of the pilots, master, or mariners, or other servants of the company in navigating the ship." It was held that the shipowners were not liable upon the contract of carriage. Baggallay and Lindley, L. JJ., were of opinion that the exception of "collision," although it did not cover the negligence of *The Crown Prince* (*x*), did cover that of *The Atjeh;* and further, that the negligence of *The Crown Prince* was covered by the exception of "accidents, &c." But the shipowners were held liable in tort (*y*) for the negligence of their servants on board *The Atjeh*, though, by reason of the rule as to division of loss, for only half the loss.

Rule as to division of loss.

The rule as to division of loss where both ships are in fault does not affect the right of a cargo-owner to recover full damages for breach of the contract of carriage against the owner of the carrying ship, though the other ship was also in fault for the collision. But it abridges his common law right, as against the owner of the other ship, by limiting the liability of the wrong-doer to one-half the loss (*z*); and this

(*t*) *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.*, 10 Q. B. D. 521.

(*u*) *Ibid.*

(*x*) *Lloyd* v. *General Iron Screw Collier Co.*, 3 H. & C. 284; *Grill* v. *General Iron Screw Collier Co.*, L. R. 1 C. P. 600; *ibid.* 3 C. P. 476.

(*y*) As to the liability of the shipowner in tort as well as upon the contract, see *Morgan* v. *Ravey*, 6 H. & N. 265; *Pontifex* v. *Midland Rail. Co.*, 3 Q. B. D. 23.

(*z*) *The Milan*, Lush. 388; *Chapman* v. *Royal Netherlands Steam Navigation Co.*, 4 P. D. 157, 165; *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.*, 10 Q. B. D. 521. *The Milan, ubi supra*, so far as it decides that the innocent cargo-owner can recover no more than half his loss against the other ship, has not been followed in America. It has been

is the case even where the two ships belong to the same owner (*a*). If part of the loss on cargo is recovered against the owner of the carrying ship, the residue, up to one-half the loss, may, it would seem, be recovered against the other ship. In America *The Milan* has not been followed, and the right of the cargo-owner to recover full damages against one or other or both the wrong-doing ships is fully recognized (*b*).

Exception of "barratry" does not cover negligence of carrying ship.

Damage to goods in a collision caused by the negligence of those of board is not covered by an exception of barratry in the bill of lading (*c*).

Shipowners contracted with a passenger that they should not be responsible for any loss or damage arising from perils of the sea . . . . or from any act, neglect, or default whatsoever of the pilot, master, or mariners. It was held that no damages could be recovered for the death of the passenger, who was killed in a collision for which the carrying ship was in fault (*d*).

Whether exception of "perils of the sea" covers infringement of the regulations.

Where the collision is caused by an unnecessary, but not negligent, breach of the regulations for preventing collisions at sea, so as to cause the ship to be deemed to be in fault under the statute, it seems to have been considered by Brett, M. R., in *Woodley* v. *Michell* (*e*), that the shipowner would be liable for damage to cargo, notwithstanding an exception in the bill of lading of "perils of the sea." *Sed qu.*

Effect of notice that carrier will not be liable for negligence of servants.

A railway company carrying passengers by land and sea attempted to free themselves from liability for the negligence of their servants by repudiating such liability in public notices and advertisements. Where, after publication of

held by the Supreme Court that the innocent cargo-owner is entitled to a decree for the whole of his loss against either of the wrong-doing ships if one only is sued; if both are sued he is entitled to a decree for half his loss against each; and if a moiety of his loss exceeds in amount the statutory liability of either of them, or if, for any other reason, he fails to obtain half his total loss from either of them, he is entitled to a further decree against the other for the difference: see *The Alabama* and *The Gamecock*, 2 Otto, 695; *The Juniata*, 3 Otto, 337; *The Atlas*, *ibid.* 502; *The Virginia Ehrman*, 7 Otto, 309; *The City of Hartford* and *The Unit*, *ibid.* 323; *The City of Paris*, 14 Blatchf. 531; *The Carlita* and *The Restless*, 13 Otto, 699; *The Eleonora*, 17 Blatchf. 88.

(*a*) *Chartered Mercantile Bank of India* v. *Netherlands India Steam Navigation Co.*, *ubi supra*.

(*b*) See *supra*, p. 131, note (*d*).

(*c*) *Grill* v. *General Iron Screw Collier Co.*, L. R. 3 C. P. 476.

(*d*) *Hay* v. *Royal Mail Steam Packet Co.*, 52 L. J. Q. B. 395, 640.

(*e*) 11 Q. B. D. 47.

such a notice, a collision occurred between a ship employed by the railway company, with cargo and passengers on board, and another ship, by the fault of the former, it was held that, under the Acts regulating their steamship traffic (*f*), the company were liable to the passengers and cargo-owners, notwithstanding the notice (*g*).

Shipowner's liability to charterer for loss by collision.

Whether the shipowners are liable to the charterer for loss sustained by the latter in consequence of a collision for which the chartered ship is in fault will depend upon the terms of the charter-party. Where such liability exists it will extend to expenses of salving the cargo, which have been paid by the charterers or their underwriters (*h*).

In a case (*i*) where the officers and crew were the servants of the owner, though by the terms of the charter-party the ship was "placed under the direction of" the charterer, it was held that the owners were liable to the charterer for loss sustained by the latter in consequence of the ship getting ashore by the negligence of her crew.

Liability of master as carrier.

The master, as well as the owner, is liable for the loss of goods taken on board by him as a common carrier (*k*). And it is said that he is liable for the negligence and misfeasance of his officers and crew (*l*). In America, it was held that the master was liable to a passenger on board his ship who was injured by a collision caused by the fault of the pilot, and not by the fault of the master (*m*).

Jurisdiction in Admiralty in case of damage to cargo.

There is jurisdiction in Admiralty in respect of a claim by the owner, consignee, or assignee of the bill of lading of goods carried into any port in England or Wales (*n*), for damage to

(*f*) The Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31); 26 & 27 Vict. c. 92, s. 31; 34 & 35 Vict. c. 119, s. 12.

(*g*) *Doolan* v. *Midland Rail. Co.*, 2 App. Cas. 792.

(*h*) *Scaramanga* v. *Marquand*, 5 Asp. M. C. 410, 506.

(*i*) *Omoa and Cleland Coal and Iron Co.* v. *Huntley*, 2 C. P. D. 464. Amongst other cases, *Fletcher* v. *Braddick*, 2 B. & P. (N. R.) 182, seems to have been relied on by the Court as establishing that the owners would be liable to third parties for the negligence of the crew. Cf. *The Tasmania*, 13 P. D. 110.

(*k*) *Mors* v. *Slew* (or *Slue*), 3 Keb. 72, 112, 135 (best report); Raym. 220; 1 Mod. 85; 1 Ventr. 238; *Boucher* v. *Lawson*, Cas. t. Hardw. 85, 194.

(*l*) Story on Agency, §§ 314—317; 3 Kent's Comm. 218; Molloy, l. 2, c. 2, s. 13.

(*m*) *Denison* v. *Seymour*, 9 Wend. 9.

(*n*) As to the meaning of this term, see *The Bahia*, Br. & L. 61; *The Pieve Superiore*, L. R. 5 P. C. 482; *The Dantzic*, Br. & L. 102.

the goods by the negligence or breach of contract by the owner, master, or crew of the carrying ship, provided no owner or part owner of the ship is at the time of the institution of the action resident in England or Wales (*o*). To enable him to sue, it seems to be necessary that the property in the goods should have passed to him (*p*). Though the statute gives a right to proceed against the ship in Admiralty, there is no maritime lien for damage in such a case (*q*).

Ship sunk average.

The right of the shipowner to recover against the cargo-owner general average contribution for the expenses of raising his ship sunk in collision is considered elsewhere (*r*).

Limitation of liability.

The application of the Act limiting the liability of shipowners upon the contract of carriage to an amount depending upon the tonnage of their ship is considered above in connection with the subject of limitation of liability (*s*). Railway companies carrying by sea in ships not owned by themselves are entitled to the benefit of this Act in some cases in which other carriers by sea are not (*t*).

Collision with reference to the Contract of Insurance.

Insurer's liability where collision is without fault in either ship. Where it is by the fault of the other ship. Where it is

Loss by a collision which occurs without fault in either ship is a loss by peril of the sea within the meaning of that term in an ordinary policy of insurance on ship (*u*). And loss by collision caused by the negligence of the other ship is a peril of the sea for which underwriters are liable (*x*). Where the collision is caused by the fault of both ships, or of the insured

(*o*) 24 Vict. c. 10, s. 6; 36 & 37 Vict. c. 66, s. 16.

(*p*) See *The Freedom*, L. R. 3 A. & E. 495, following *The St. Cloud*, Br. & L. 4; *The Norway*, Br. & L. 377. The contrary has been held by Sir R. Phillimore, though the facts did not render a decision upon the point necessary. See *The Fylia Maggiore*, L. R. 2 A. & E. 106; *The Nepoter*, *ibid.* 375. It does not appear that these cases were cited in *The Freedom*.

(*q*) *The Pieve Superiore*, L. R. 5 P. C. 482.

(*r*) *Infra*, p. 283.

(*s*) *Supra*, pp. 116 *seq.*

(*t*) See *supra*, p. 164.

(*u*) In *Buller* v. *Fisher*, 3 Esp. 67, it was held to be within the exception of "perils of the sea" in a charter-party: *Phelps* v. *Bridle*, 3 Dougl. 371

(*x*) *Smith* v. *Scott*, 4 Taunt. 126; and see *per* Lord Cairns, C., *Nugent* v. *Thompson*, 3 App. Cas. 279, 286. See also *Blythe* v. *Marsh*, 1 McCord, 360, cited in Angell on Carriers, 5th ed. 153, note, as to the law in America.

by the fault of both ships, or of insured ship alone.

ship alone, it seems that the underwriters are liable for the loss on the insured ship (*y*). The principle is that, where the loss is caused by a peril insured against, the insurers are liable, although the loss was also caused by the negligence of the insured or his servants (*z*). In such cases the loss is said to be caused proximately by the peril specified, and remotely by the negligence, and the maxim *causa proxima non remota spectatur* applies (*a*).

Demurrage expenses arising from collision.

Expenses arising from delay caused by collision are not recoverable under the ordinary Lloyd's policy (*b*).

The "running-down" clause.

By the old form of marine policy the insurers did not undertake to repay to the assured damages which may be recovered against them for a collision in which their ship was in fault (*c*). But it is now usual for the insurers upon a Lloyd's policy, by a special clause, known as the "running-down" clause, to agree to pay three-fourths of any such damages; and the remaining one-fourth is frequently covered by separate insurance.

A common form (*d*) of the running down clause in a Lloyd's policy is as follows:—

"And it is further agreed that if the [ship], hereby insured, shall come into collision with any other ship or vessel, and the assureds shall in consequence thereof become liable to pay, and

(*y*) *De Vaux* v. *Salvador*, 4 Ad. & E. 420; *Simpson* v. *Thompson*, 3 App. Cas. 279; *The Potomac*, 15 Otto, 630; *General Mutual Insurance Co.* v. *Sherwood*, 14 How. 351 (the last two are American cases).

(*z*) *Dixon* v. *Sadler*, 5 M. & W. 414, 415; S. C. on app. 8 M. & W. 895; *Walker* v. *Maitland*, 5 B. & A. 171; *Busk* v. *Royal Exchange Assurance Co.*, 2 B. & Ald. 73; *Dudgeon* v. *Pembroke*, 2 App. Cas. 284; *Davidson* v. *Burnand*, L. R. 4 C. P. 117, 121.

(*a*) See further as to this subject, Arnould on Insurance, 7th ed. ss. 791 *seq.*; *Simpson* v. *Thompson*, 3 App. Cas. 279. Cf. French Commercial Code, Arts. 350 and 353; Spanish C. C. Art. 861; Dutch C. C. Art. 637; German C. C. Arts. 820, 821. By the two first codes, only *abordages fortuits*, by the others, all collisions, are at the insurer's risk. It has been held that loss in a collision caused by the fault of those on board the carrying ship does not arise from barratry, within the meaning of that term in a bill of lading: *Grill* v. *General Iron Screw Collier Co.*, L. R. 3 C. P. 476.

(*b*) *De Vaux* v. *Salvador*, 4 A. & E. 420. For an instance of collision as *causa proxima*, see *Reischer* v. *Borwick*, (1894) 2 Q. B. 548.

(*c*) *De Vaux* v. *Salvador*, 4 A. & E. 420. This case, once dissented from in America, is now recognized as binding by the Supreme Court: *General Mutual Insurance Co.* v. *Sherwood*, 14 How. 352. *Aliter* by French law: Caumont, Dict. de Droit Mar. tit. Abordage: and by German law: German C. C. Art. 824.

(*d*) This form is taken from Maude & Pollock on Shipping, 4th ed. 446. More modern forms of the clause are set out in "Marine Insurance," by Mr. Douglas Owen, 3rd ed. 94 *seq.*

shall pay, any sum or sums not exceeding the value of the said vessel hereby assured, we, the assurers, will severally pay the assureds such proportions of three-fourths of the sum so paid, as our respective subscriptions hereto bear to the insured value of the said vessel. And in cases where the liability of the ship has been contested, with our consent in writing, we will also pay a like proportion of three-fourths of the costs thereby incurred or paid. But this agreement is in no case to be construed as extending to any sums the assureds may become liable to pay, or shall pay, in respect to loss of life or personal injury to individuals from any cause whatever."

A running-down clause expressed to cover damages which the assured ship should be compelled to pay for running down and damaging another ship was held not to include damages recovered against the insured ship by the representatives of persons on board the other ship who lost their lives in the collision (*e*). In another case (*f*) a similar clause was held not to include costs which the insured incurred in defending a collision action brought against his ship. In the form of policy in use at Lloyd's, these points are now expressly provided for; the insurers undertake to repay three-fourths of the costs, if the liability of the ship is contested with their consent; and damages for loss of life or personal injury are expressly left at the risk of the assured. *Taylor* v. *Dewar*.

The North Britain (*g*) and *The Paraguay*, by the fault of both, collided in the Scheldt. *The Paraguay* sank, and her owners were compelled to repay to the Belgian authorities the cost of raising her. *The North Britain* owners paid half this sum to *The Paraguay* owners, as damages caused by the collision; and they sought to recover this sum from the underwriters on *The North Britain*. In the policy there was a proviso that the underwriters should not be liable for "any sum which the assured may become liable to pay or shall pay for removal of obstructions under statutory powers." It was *The North Britain*.

(*e*) *Taylor* v. *Dewar*, 5 B. & S. 58. But the contrary has been held in Scotland: *Coey* v. *Smith*, 22 Ct. of Sess. Cas. 2nd ser. 955; *Excelsior Co.* v. *Smith*, 2 L. T. 90.

(*f*) *Xenos* v. *Fox*, L. R. 4 C. P. 665.

(*g*) *The North Britain*, [1894] P. 77; approved in *The Engineer*, [1898] App. Cas. 382; *Burges* v. *Federal Mutual Insurance Co.*, [1900] 2 Q. B. 348.

held upon appeal, reversing the decision of Gorell Barnes, J., that the underwriters were not liable.

The Munroe. The risk (*h*) covered by a policy included "loss or damage through collision with any other ship or vessels or . . . . sunken . . . . wreck." The ship grounded on a sunken wreck, and was damaged, and afterwards forged slightly ahead until her bows grounded upon a heap of iron ore, which was part of the cargo of another sunken ship, where she received further damage from the ore forward and the wreck aft. It was held that the insurers were liable for the whole of the damage. In *Chandler* v. *Blogg* (*i*), striking a barge that was sunk and about to be raised was held to be "collision with any other ship or vessel"; and in *Union Marine Insurance Co.* v. *Borwick* (*k*), grounding on the toe or underwater part of Holyhead breakwater was held to be "collision with . . . . piers, or stages, or similar structures" within the meaning of those words in policies of insurance. So in *Margetts* v. *Ocean Accident and Guarantee Association*, striking upon another ship's anchor was held to be collision with a "vessel" (*l*).

The Niobe. In *The Niobe* (*m*), the doctrine that tug and tow are one ship was applied so as to make insurers on the tow liable for damage done by the tug. The policy contained the usual collision clause, and the tug, by her own fault and by the fault of the tow, was in collision with a third ship, for which collision the tow was sued and paid damages. It was held that the insurers were liable.

Thompson v. *Reynolds.* A ship was insured in a policy containing a running-down clause, by which the insurers undertook to bear three-fourths of any sum, not exceeding the value of the ship and freight, which the assured should become liable to pay, and should pay, for collision with another ship. The ship insured was sold in an Admiralty damage suit for less than her value. It was held that the underwriters were liable for no more than three-fourths of the sum for which the ship was sold (*n*).

(*h*) *The Munroe*, (1893) P. 248.
(*i*) 8 Asp. M. C. 349.
(*k*) 8 Asp. M. C. 71.
(*l*) (1901) 2 K. B. 792.
(*m*) *McCowan* v. *Bain, The Niobe*, (1891) A. C. 401.
(*n*) *Thompson* v. *Reynolds*, 7 E. & B. 172.

The Balnacraig (*o*) was insured with the London Steamship Owners' Insurance Association against "loss of or damage to any other vessel . . . . so far as such loss is not covered by the usual form of Lloyd's policies with the clause commonly known as the running-down clause attached." She was also insured with the same Association and at Lloyd's against the usual maritime risks, including collision. Whilst so insured she came into collision with *The Karo*, and in the collision both ships received damage, but the loss to *The Balnacraig* exceeded that to *The Karo*. Both ships were in fault, and the owners of *The Karo* (without any action being brought by or against them) paid to the owners of *The Balnacraig* the difference between half the losses on the two ships respectively. The question arose (in a claim for a set-off in an action for money received by the defendants, *The Balnacraig* owners, for the use of the plaintiffs, the Insurance Association), whether *The Balnacraig* owners were entitled to recover against the Association a sum of 51*l*., which sum represented one-fourth of the damage suffered by *The Karo* in the collision, and had been taken into account in reduction of the amount paid by her owners to the owners of *The Balnacraig*. It was held by Mathew and Wills, JJ., that *The Balnacraig* owners were entitled to receive nothing from the Association; that the collision clause in the Lloyd's policy never came into operation, because nothing was ever paid or payable by *The Balnacraig* owners to *The Karo* owners. The principle laid down by *The Khedive* (*p*) (said Mathew, J.) was, that "neither in fact nor in law is the owner of the assured ship liable to pay or entitled to receive more than the balance which equalizes the loss"; and the words of the collision clause, "become liable to pay, and shall pay," showed that it was intended to operate only where the balance of loss by collision being against the assured ship, she had to make a payment to the other ship.

London Steamship Owners' Insurance Co. v. *Grampian Steamship Co.* and *The Balnacraig*.

It is a maxim of insurance law that the assured cannot recover for a loss caused by his own wrong-doing (*q*). But

Insurance against servants' negligence

(*o*) *London Steamship Owners' Insurance Co.* v. *Grampian Steamship Co.*, 24 Q. B. D. 663.

(*p*) 7 App. Cas. 795.

(*q*) See *per* Lord Campbell, *Thompson* v. *Hopper*, 6 E. & B. 172, 191.

this rule does not invalidate a contract to indemnify the assured against damages payable by him in respect of loss caused by the negligence of his servants (*r*). Any doubt that formerly existed as to the validity of such insurances (*s*) is removed by 57 & 58 Vict. c. 60, s. 506. They may be effected without a policy (*t*), and have given rise to a new and special class of insurance societies or clubs.

Loss after voyage insured from collision occurring during voyage.

If a ship receives her death wound in a collision which occurs during a voyage or time for which the ship is insured, and she sinks after the completion of the voyage or time, a question might arise as to the liability of the insurers. In a case mentioned by Willes, J. (*u*), but not reported, the insurer (*x*) was held not liable in such case. In *Knight* v. *Faith* (*y*), a somewhat similar case, the case above referred to was doubted, and underwriters on a time policy were held liable for a partial loss.

Insurers subrogated to rights of insured.

After paying the amount due upon the policy for a total loss the insurers are entitled to the ship herself, salvage from her (*z*), and all the rights of the assured in respect of her (*a*). But they are not necessarily subject to liabilities to which the owner was subject in respect of her (*b*). So they are entitled to any damages that may be recovered against the wrong-doer in a collision by which the insured ship is injured or lost (*c*).

(*r*) See *Thompson* v. *Reynolds*, 7 E. & B. 172; *Walker* v. *Maitland*, 5 B. & A. 171.

(*s*) See *Anonymous Case* (or *Delaney* v. *Robson*), 5 Taunt. 605; *Taylor* v. *Dewar*, 5 B. & S. 58.

(*t*) 54 & 55 Vict. c. 39, s. 93.

(*u*) *Meretony* v. *Dunlope*, 1 T. R. 260. It appears that insured in report of 1817 is a misprint for insurer: see 15 Q. B. 664, note.

(*x*) See *Lockyer* v. *Offley*, 1 T. R. 252. If a ship which is insured is injured in collision and is repaired, and afterwards becomes a total loss, the insurers are liable as well for the expense of the repairs as for the loss. But they are not liable for damage caused by the collision beyond the expense actually incurred in repairing such damage: *Steuart* v. *Steele*, 5 Scott, N. R. 927.

(*y*) 15 Q. B. 649, 667. See also *Lidgett* v. *Secretan*, L. R. 5 C. P. 190.

(*z*) As to what is salvage, see *Burnand* v. *Rodocanachi*, 6 Q. B. D. 633; 7 App. Cas. 333.

(*a*) See *Darrell* v. *Tibbits*, 5 Q. B. D. 560 (a case of fire insurance).

(*b*) As, for example, the expense of compulsorily raising her: *Eglington* v. *Norman*, 46 L. J. Ex. 557, overruled on another point.

(*c*) *Yates* v. *Whyte*, 4 Bing. N. C. 272, 283; 5 Scott, 650; *White* v. *Dobinson*, 14 Sim. 373; *Randal* v. *Cochrane*, 1 Ves. 98; *Blaanpot* v. *Da Costa*, 1 Eden, 130; *Brooks* v. *MacDonnell*, 1 Y. & C. Ex. 500; *Midland Insurance Co.* v. *Smith*, 6 Q. B. D. 561; *Scaramanga* v. *Marquand*, 5 Asp. M. C. 410, 506. As to what evidence is required of the right of the insurer to sue in the name of the insured, see *The John Bellamy*, L. R. 3 A. & E. 129.

And, in the case of a valued policy, the right of the insurers is the same, although the value named in the policy is less than the actual value of the ship (*d*).

North of England, &c. Assurance Association v. Armstrong.

A policy of insurance was effected for 6,000*l.* upon a ship which was valued at 6,000*l.* The ship was sunk in a collision, and the underwriters paid the owners 6,000*l.*, as for a total loss. Afterwards, the underwriters, in the name of the shipowners, instituted a damage suit in the Admiralty Court against the other ship. It was held that the last-mentioned ship was solely in fault for the collision, and judgment was given against her owners for 5,683*l.* 11*s.* 7*d.*, the amount of their statutory liability. The true value of the ship insured was 9,000*l.*; and her owners claimed so much of the damages recovered in the Admiralty action as would make up the difference between the sum paid to them by the underwriters and the value of their ship. It was held that, as between the shipowner and the underwriters, the value named in the policy was conclusive, and that the underwriters were entitled to the whole of the damages, just as they would have been entitled to the ship if she had been sunk and afterwards recovered (*e*).

The Potomac (American case).

A vessel being insured by valued policies to the extent of two-thirds of her valuation, the assured agreed to assign to the insurers all right to recover damages for any loss paid for by them, and that the insurers should be entitled to such proportion of the damages recovered as the amount insured should bear to the valuation in the policies. The insurers paid to the assured two-thirds of the loss suffered by them in a collision for which both ships were in fault, and they released and assigned to the owners of the other ship their right to damages growing out of the collision. In an action by the owners of the insured ship against the owners of the other ship for damages from the collision, it was held by the Supreme Court of the United States that one-half of the two-thirds must be deducted from the sum recoverable by the owners of the insured ship against the other ship (*f*).

Assured is trustee for

If the assured, after receiving the amount of his loss from

(*d*) *North of England, &c. Assurance Association* v. *Armstrong*, L. R. 5 Q. B. 244.

(*e*) *North of England, &c. Assurance Association* v. *Armstrong*, L. R. 5 Q. B. 244.

(*f*) *The Potomac*, 15 Otto, 630.

insurer of damages recovered; he may sue wrong-doer notwithstanding payment by insurers.

his insurers, recovers damages from the wrong-doer in the collision, he is a trustee of such damages for the underwriter (*g*). But the fact that the plaintiff in a collision action has been compensated for his loss by his insurers is no answer to his claim for damages against the wrong-doer (*h*).

The defendants insured their ship, *The Queen of the East*, for 1,000*l.* with the plaintiffs; and insured the freight elsewhere. The ship, while proceeding to a port of loading under a charter-party, was run into and damaged by *The Cassandra*. The defendants abandoned their ship to the plaintiffs, who settled with the defendants as for a total loss. The defendants afterwards recovered in the Admiralty Division against the owner of *The Cassandra* damages in respect of the loss of their ship and also in respect of loss of freight. It was held that the plaintiffs were not entitled to recover against the defendants the damages recovered by them for loss of freight. The money had been paid by the defendants to the insurers on freight, and, in the opinion of the Court of Appeal, rightly so paid (*i*).

Insurers cannot recover where insured could not have recovered.

In an action in which the insured could not have recovered damages, neither can the underwriters. They have no right of action apart from him (*k*); and in a case in Admiralty before the Judicature Act it was held that they must sue in his name (*l*).

Rights of underwriters in case of collision between ships of the same owner.

Where a collision occurred between two ships belonging to the same owner, and one of them, with cargo on board not belonging to the shipowner, was sunk by the fault of the other ship, the shipowner paid into Court, under the Merchant Shipping Acts, the amount to which his liability, as owner of the wrong-doing ship, was limited. It was held, that as against the cargo-owners, underwriters upon the innocent ship, who had paid the insurance upon her, were

(*g*) *Yates* v. *Whyte*, *ubi supra*.

(*h*) *Mason* v. *Sainsbury*, 3 Dougl. 61; *Yates* v. *Whyte*, *ubi supra*; *Taylor* v. *Dewar*, 4 B. & E. 58. And see *Bradburn* v. *Great Western Rail. Co.*, L. R. 10 Ex. 1; *The Yeager*, 20 Fed. Rep. 653; *The Potomac*, 13 Fed. Rep. 399.

(*i*) *Sea Insurance Co.* v. *Hadden*, 53 L. J. Q. B. 252; 13 Q. B. D. 706.

(*k*) *Simpson* v. *Thompson*, 3 App. Cas. 279.

(*l*) *The Regina del Mare*, Br. & L. 315; *The John Bellamy*, L. R. 3 A. & E. 129; *Midland Insurance Co.* v. *Smith*, 6 Q. B. D. 561.

entitled to no part of the money paid into Court (*m*). The decision would, it seems, be the same in the case of a collision between two ships owned in part by the same persons.

In *Simpson* v. *Thompson* the members of the House of Lords who addressed the House declined to express an opinion whether the ordinary marine policy covers a loss by collision with another ship belonging to the assured.

No general average contribution for damage in collision.

Damage to ship or goods by collision is not the subject of general average contribution; and the insurers will not ordinarily be liable to contribute in such case. But for loss voluntarily incurred in consequence of collision, as where gear and wreckage is cut away for the safety of the ship, the shipowner has recovered by way of general average contribution (*n*). In such a case the underwriter would be liable.

A collision between a barque and a steamship being inevitable, without fault on the part of the barque, the barque altered her course so as to strike the steamship stem on, and thereby probably saved herself from being sunk with her cargo. In consequence of the collision she had to go into a Danish port for repairs. She was arrested at the suit of the steamer, and by a decree of the Danish Court her owners were compelled to pay half the difference of the losses on the two ships. They sought to recover this sum, together with the cost of the repairs to their own ship, and of the proceedings in the Danish Court, as general average contribution from the owners of cargo. It was held by a Massachusetts Court that they could not recover (*o*).

Incidental Rights and Liabilities arising out of Collision.

Criminal liability for a collision.

Beyond incurring the civil liability for damages, the person guilty of reckless or negligent navigation, whereby a

(*m*) *Simpson* v. *Thompson*, 3 App. Cas. 279. The rights and liabilities of underwriters were very fully discussed in this case.

(*n*) *Plummer* v. *Wildman*, 3 M. & S. 482. See also *The Ettrick*, 6 P. D. 127, as to the right of the shipowner to general average contribution from cargo-owner whose goods were sunk in collision and raised with the ship.

(*o*) *Emery* v. *Huntington*, 12 Amer. Rep. 725.

collision occurs in which life is lost, or bodily injury suffered, may be prosecuted criminally. "Those who navigate improperly, either by too much speed, or by negligent conduct, are as much liable, if death ensues, as those who cause it on a public highway, either by furious driving or negligent conduct" (*p*). The criminal liability attaches only to those by whose personal misconduct or negligence the collision occurs (*q*). But where a foreign ship, in charge of an English pilot in the Thames, ran down a boat and drowned a man, and the collision was caused by the man at the helm, a foreigner, not understanding and carrying out the pilot's orders, it was held that the pilot was guilty of manslaughter, if by his own negligence he failed to make his orders understood (*r*).

The master, pilot, or any seaman of a British ship, who wilfully or negligently endangers the life of any person on board such ship, or endangers the ship herself, is guilty of a misdemeanour (*s*).

Malicious injury to a boat used for the guidance of seamen or for purposes of navigation is felony (*t*).

Infringement of the regulations.

Where an infringement of the collision regulations causes damage, the person in charge of the deck is guilty of a misdemeanour (*u*).

Wilful infringement of the regulations by a master or owner is a misdemeanour punishable by fine or imprisonment. In case of damage arising from such infringement, the person in charge of the deck is liable to these penalties, unless it is proved that departure from the regulations was necessary (*x*). And although the master or person in charge of the ship is liable criminally, the owner is answerable in a civil action for damage caused by his officer's negligence (*y*).

(*p*) *Per* Parke, B., in *Reg.* v. *Taylor*, 9 C. & P. 672, 674.

(*q*) *Rex* v. *Allen*, 7 C. & P. 153; *Rex* v. *Green*, *ibid.* 156; *Reg.* v. *Barrett*, 2 C. & K. 393; *Reg.* v. *Haines*, *ibid.* 368; and see *Oakley* v. *Speedy*, 40 L. T. 881.

(*r*) *Reg.* v. *Spence*, 1 Cox, C. C. 352. See *London School Board* v. *Lardner*, Times, 20 Feb. 1884.

(*s*) 57 & 58 Vict. c. 60, ss. 220, 607.

(*t*) 24 & 25 Vict. c. 97, s. 48.

(*u*) 57 & 58 Vict. c. 60, ss. 419, 680.

(*x*) As to whether an infringement of local regulations is within the penalty of these Acts, see *The Lady Downshire*, 4 P. D. 26; *The Swansea* and *The Condor*, 4 P. D. 115; *supra*, p. 55.

(*y*) See *Grill* v. *General Iron Screw Collier Co.*, L. R. 3 C. P. 476, where it was held that wilful infringement

Criminal liability where the ship or the offender is foreign, or the collision occurs abroad.

In the case of a collision caused by the criminal fault of a foreigner, or where the collision occurs abroad, if it is sought to punish the offender in this country, questions of difficulty arise as to his liability to the criminal law of England, and the jurisdiction of our Courts. The liability and jurisdiction depend upon (1) the offender's nationality; (2) the flag of the ship on board which the offence was committed; and (3) the place of collision. The subject does not belong to the present treatise; but it has been the occasion of much discussion as to the limits of municipal and Admiralty jurisdiction. The cases are collected below (*z*).

Officer's certificate may be cancelled.

If a collision involving loss of life or serious damage to either ship is caused by the wrongful act or default of an officer holding a Board of Trade certificate, his certificate may be cancelled or suspended at a Board of Trade inquiry (*a*).

Salvage after collision.

One of the consequences of negligence causing collision is that the wrong-doer cannot recover salvage remuneration for service rendered to the ship with which he has been in collision, although the latter is also in fault for the collision (*b*); nor, *à fortiori*, can he claim salvage against the innocent owner of cargo on board her. Nor can a tug recover salvage reward for assistance rendered to a ship with which her tow has been in collision by the fault of herself, the tug (*c*). An innocent ship may recover salvage for services rendered to another which has negligently run into her. The law which makes it the duty of a ship which has been in collision with another to stand by her, and render assistance, does not pre-

of the regulations was not barratry within the meaning of a bill of lading.

(*z*) *Reg.* v. *Keyn*, 2 Ex. D. 63, 232, *seq.*; *Reg.* v. *Sattler*, D. & B. C. C. 525; *Reg.* v. *Anderson*, L. R. 1 C. C. R. 161; *Reg.* v. *Carr*, 10 Q. B. D. 76; *Reg.* v. *Seberg*, L. R. 1 C. C. R. 264; *Cunningham's Case*, Bell's C. C. 220, 234; *Reg.* v. *Menham*, 1 F. & F. 369; *Reg.* v. *Lewis*, 1 D. & B. C. C. 182.

(*a*) 57 & 58 Vict. c. 60, ss. 469, 470; 25 & 26 Vict. c. 63, s. 23. As to the master's liability in respect of his certificate when a pilot is on board, see *supra*, pp. 238 *seq.*

(*b*) *Cargo ex Capella*, L. R. 1 A. & E. 356, followed in *The Castle Rising*, Ad. Div. March. 1886. *The Ettrick*, 6 P. D. 127; and see *The Glengaber*, L. R. 3 A. & E. 531. The rule is the same in America: *The Clarita*, 23 Wall. 1; *The Sampson*, 4 Blatchf. 28; *The Charles E. Soper*, 19 Fed. Rep. 811.

(*c*) *The Glengaber*, *ubi supra*; *The Altair*, (1897) P. 105. Where the fault of the tug was a statutory infringement of the regulations as to lights, her claim to salvage was not disallowed: *The Veritas*, (1901) P. 304.

Salvage for towing ships clear of each other.

vent her from recovering salvage reward for assistance so given (*d*). A tug is entitled to salvage remuneration from one of two ships in collision to which she renders assistance by towing the other clear (*e*). And it seems that upon the same principle, a vessel would be entitled to salvage remuneration for holding one ship off another towards which she is driving.

Tug or salvor in collision with the vessel she is assisting.

A salvor damaged, without negligence on her own part, by collision with the vessel she is assisting, may recover against the latter (*f*); and a vessel engaged in rendering a salvage service to another does not forfeit her right to salvage by going into collision with the other, even though there was negligence on her part such as to make her liable in damages for the collision (*g*).

Where two vessels were in collision, and entangled together in a position dangerous to both, the propeller of one being foul of the chain cables of the other, a tug which, by towing ahead the vessel at anchor, enabled her to slip from her anchors, and so get clear from the vessel which was foul of her, was held to be entitled to recover salvage award from both vessels (*h*).

A salving tug was in America held liable to a third ship which the salved ship struck and injured by reason of the insufficient power of the tug, although the salvage service (towing out of dock a ship on fire) was properly undertaken, and there was no negligence on the part of the tug in performing it (*i*).

The fact that some of the owners of a ship that rendered salvage service to another were also owners of the ship whose negligence had done the mischief, and rendered the service necessary, was held not to deprive the salving ship of the right to salvage remuneration (*k*). Sir R. Phillimore said:—

(*d*) *The Retriever* and *The Queen*, 17 L. T. 329.

(*e*) *The Vandyck*, 7 P. D. 42.

(*f*) *The Mud Hopper*, 4 Asp. M. C. 103.

(*g*) *The C. S. Butler* and *The Baltic*, L. R. 4 A. & E. 178. In *The Diana*, 2 Asp. M. C. 366, the owners of a ship which had been found to blame for collision were allowed to intervene in a salvage suit instituted by third parties against the injured ship, and to have the conduct of the defence. In *The Devina*, (1892) P. 58, the amount of the damage was deducted from the salvage award.

(*h*) *The Vandyck*, 7 P. D. 42.

(*i*) *The Ashbourne*, 99 Fed. Rep. 111.

(*k*) *The Glengaber*, L. R. 3 A. & E. 534.

"I know of no authority for the proposition that a vessel wholly unconnected with the act of mischief is disentitled to salvage reward simply because she belongs to the same owners as the vessel that has done the mischief."

Collision with tow by fault of tug is breach of towage contract.

If by the negligence of those on board a tug in the performance of the towage the ship in tow is damaged by collision with a third ship, or damages a third ship, and is compelled to make such damage good, there is a breach of the towage contract, and the tug can recover nothing in respect of the towage service (*l*). And we have seen (*m*) that, beyond forfeiting their right to remuneration, the owners of the tug, and the tug herself, are liable to the owners of the tow for the loss. Where a vessel in tow is injured in a collision, and has to stop and repair her damages, the tug is not entitled in a towage action to further remuneration beyond the sum agreed for towage, because she voluntarily stands by whilst the repairs are being effected, and then completes the towage (*n*).

General average contribution.

Damage received in a collision by a ship or cargo is not the subject of general average contribution; and this is so whether the ship was in fault for the collision or not. But loss voluntarily incurred for the benefit of all concerned after and in consequence of a collision for which the ship was not in fault (*o*), and salvage expenses incurred under the same circumstances (*p*), may be recovered as general average. The owners of a ship sunk in collision by her own fault cannot recover by way of general average contribution from cargo owners any part of the expense of raising the cargo (*q*).

Expense of raising ship sunk in collision.

If a ship after collision sinks, her owners are in some places liable under local Acts to the harbour authority or other public body for the expense of raising her; and such

(*l*) *The Christina*, 3 W. Rob. 27. *Semble*, *aliter* where the contract is for salvage service: *The C. S. Butler*, L. R. 4 A. & E. 178.

(*m*) *Supra*, pp. 272 *seq.*

(*n*) *The Hjemmett*, 5 P. D. 227.

(*o*) See *Plummer* v. *Wildman*, 3 M. & S. 482. This case was much discussed in *Attwood* v. *Sellar*, 5 Q. B. D. 286.

(*p*) See *per* Brett, M. R., in *The Ettrick*, 6 P. D. 127; *Kemp* v. *Halliday*, L. R. 1 Q. B. 520. But see *Greer* v. *Poole*, 5 Q. B. D. 272.

(*q*) *The Ettrick*, 6 P. D. 127. Cp. *Scaramanga* v. *Marquand*, 5 Asp. M. C. 110, 506, as to the rights of the cargo-owner and his underwriters, *supra*, p. 278.

expense may usually be recovered by the authorities by sale of the ship and cargo (*r*).

Penalty for injuring lightship.

If a vessel wilfully or negligently injures a lightship, she incurs, in addition to her liability for damages, a penalty of 50*l.* (*s*).

Rights of holder of bottomry bond on freight.

As to the right of the holder of a bottomry bond on freight to share in the amount of the wrong-doing shipowner's statutory liability, see above, p. 165.

(*r*) As to the Thames, see *The Ettrick*, 6 P. D. 127 ; *The Harrington*, 13 P. D. 48 ; *The Sea Spray*, (1907) P. 133 ; 40 & 41 Vict. c. 16 ; 57 & 58 Vict. c. lxxxvii. ; 20 & 21 Vict. c. 147 (local) ; the Tyne, see *The Crystal*, (1894) App. Cas. 508.

(*s*) 57 & 58 Vict. c. 60, s. 666.

CHAPTER XII.

PRACTICE (*a*).

Service of writ out of the jurisdiction.

NEITHER in the Admiralty (*b*) nor in the King's Bench Division (*c*) can a personal action for damages, in respect of a collision occurring below low-water mark of the United Kingdom, be brought against a person not domiciled or ordinarily resident within the jurisdiction (*d*) unless the writ of summons be served within the jurisdiction. In such a case, service of the writ out of the jurisdiction will not be ordered except where the person to be served is a necessary or proper person to an action properly brought against another person who has been duly served within the jurisdiction (*e*).

Address of writ.

A writ addressed to a person resident abroad and intended to be served upon his coming within the jurisdiction, will not be set aside merely because it describes him as having an English address (*f*). A writ addressed to a foreign corporation without any further description than the style of the corporation will be set aside (*g*); and a writ served upon the clerk of a firm who in this country act as agents of a foreign corporation, will be set aside (*h*).

By whom to be served.

In an action *in rem* the writ of summons was served in the manner provided by Ord. IX. r. 12. No appearance was

(*a*) The present chapter in an epitome of practice cases which have arisen in collision actions. For information upon Admiralty practice generally, the reader is referred to Williams & Bruce, Admiralty Practice; Roscoe's Admiralty Law and Practice; Raikes & Kilburn, Admiralty Jurisdiction of the County Courts.

(*b*) *In re Smith*, 1 P. D. 300; *The Vivar*, 2 P. D. 29; *The Helenslea*, 7 P. D. 57.

(*c*) *Harris* v. *Owners of the Franconia*, 2 C. P. D. 173.

(*d*) Ord. XI. r. 1, sub-s. (*c*). As to a foreign corporation carrying on business in this country (Ord. IX. r. 8), see *The Bourgogne*, [1899] App. Cas. 131.

(*e*) *The Duc d'Aumale*, [1903] P. 18; action against English tug; tow French, and collision on high seas, service of note of writ on French owners of tow ordered under Ord. XI. r. 1 (*g*). See also *The Hagen*, [1908] P. 189.

(*f*) *The Helenslea*, *ubi supra*.

(*g*) *The W. A. Scholten*, 13 P. D. 8.

(*h*) *The Princesse Clementine*, [1897] P. 18.

entered, and the action came on for judgment by default under Ord. XIII. rr. 12, 13. The writ had been served by the solicitor's clerk, who made the affidavit of service. It was held that the service was valid, and that service by the marshal or his substitute was not necessary (*i*).

Plaintiffs may sue as "owners."

The old practice of the Admiralty enabling plaintiffs to sue as "owners" of ship or cargo without naming them is not abrogated by the Judicature Act rules (*k*), but in all actions for limitation of liability the names of the owners should be set out (*l*).

Preliminary act.

The enactment, R. S. C., Ord. XIX. r. 28, requires preliminary acts to be filed in actions for collision between vessels (*m*). Each party is required in his preliminary act to state the material facts upon which he founds his case. No preliminary act is required in an action by the owner of a ship in tow against the owner of a tug for negligent towage, whereby a collision was caused between the tow and a third ship (*n*); but in the absence of evidence that it was impossible to file a preliminary act, it was held necessary in an action by the owner of cargo on board a barge against a ship with which the barge was in collision (*o*). In an action by the owners of cargo against the carrying ship for damage to cargo by collision caused by the fault of the carrying ship, no preliminary act is necessary (*p*).

Object of preliminary acts.

The object of the preliminary act was explained by Dr. Lushington in *The Vortigern* (*q*). "Preliminary acts were instituted for two reasons—to get a statement from the parties of the circumstances *recenti facto*, and to prevent the defendant from shaping his case to meet facts put forward by the plaintiff." Consequently, the Court will not allow a party before (*r*) or at (*s*) the hearing to depart from or

(*i*) *The Solis*, 10 P. D. 62.

(*k*) *The Assunta*, (1902) P. 150; *The Maréchal Suchet*, (1896) P. 233.

(*l*) *The Inventor*, 10 Asp. 99.

(*m*) Including cases of injury to person; *Webster* v. *Manchester, Sheffield, &c. Rail. Co.*, 5 Asp. M. C. 256, note.

(*n*) *Armstrong* v. *Gaselee*, 22 Q. B. D. 250.

(*o*) *Secretary of State for India* v. *Hewett*, 6 Asp. M. C. 384. There had been an action in Admiralty between the barge and the ship. This is the case referred to by Huddleston, B., in *Armstrong* v. *Gaselee*, 22 Q. B. D. 252.

(*p*) *The John Boyne*, 3 Asp. M. C. 341.

(*q*) Swab. 518.

(*r*) *The Miranda*, 7 P. D. 185.

(*s*) *The Frankland*, L. R. 3 A. & E. 511; *The Vortigern*, Swab. 518.

amend (*t*) his preliminary act, but this practice has been sometimes departed from. The information must be given fully; any concealment will be viewed by the Court with suspicion (*u*).

Proof must be *secundum allegata*.

It was a rule of the Admiralty Court that a plaintiff in framing his statement of claim must state the circumstances of the collision, so far as they are known to him (*v*), with sufficient clearness and accuracy to enable his adversary to know the case which he has to meet (*x*). The particular acts of negligence which caused the collision must be stated in specific terms. Where the plaintiff alleged that the collision was caused by the starboarding of the helm of the defendant ship, and the fact was that the helm was never starboarded, the plaintiff failed to recover, although it was proved that his adversary's ship was in fact alone to blame (*y*), but since the Judicature Acts the rules as to strictness of pleading have been relaxed, and amendments are allowed so as to prevent any technical injustice, but the rule that proof must be *secundum allegata* is enforced only so far as the *allegata* are material (*z*), in other words, so far as the non-observance of the rule has made it impossible for the defendant to meet the case brought against him.

Infringement of regulations must be specifically alleged.

If any of the regulations for preventing collisions at sea have been infringed, it has always been the practice (*a*) for the plaintiff to specify which they are. In the absence of such an allegation in his pleadings, it is doubtful if evidence of the infringement would be admitted (*b*). But it is not essential that the plaintiff should prove all the allegations

(*t*) *The Miranda*, 7 P. D. 187.

(*u*) *The Godiva*, 11 P. D. 20.

(*v*) As to when they are not known, see *The Schwalbe*, Swab. 521; *The England*, 5 Not. of Cas. 174.

(*x*) The whole subject is exhaustively dealt with in Roscoe's Admiralty Practice, 3rd ed., pp. 325 *seq.*; and see Ord. XIX. r. 4.

(*y*) It was so held before the Judicature Acts: *The Ann*, Lush. 55; *The Marpesia*, L. R. 4 P. C. 212; *The North American*, Swab. 358; *The Haswell*, Br. & L. 247. See also *The Hochung* and *The Lapwing*, 7 App. Cas. 512; and *infra*, p. 287.

(*z*) *The Alice and Rosita*, L. R. 2 P. C. 214.

(*a*) *The Ebenezer*, 2 W. Rob. 200, 211; *The Bothnia*, Lush. 52, 54.

(*b*) See *The New Pelton*, [1891] P. 258, 263. In *The Peiros*, Ad. Div. 10th Nov. 1886, Sir J. Hannen allowed an amendment of the statement of claim at the trial by inserting a charge of breach of the "starboard side" rule. Cp. *The Lady Ann*, 7 Not. of Cas. 361, 370, where under special circumstances the defendant ship was found to blame for a failure to port which was not alleged in the pleadings.

made in his statement of claim; if he proves the material part of the case alleged, it will be sufficient (*c*). An allegation that the defendant ship was alone in fault does not prevent the plaintiff from obtaining a judgment for half his loss upon proof that both ships were in fault (*d*).

Defence.

The defendant in his defence, besides traversing all the allegations of the plaintiff he intends to deny, should state the circumstances of the collision (*e*). Thus, if the defence is that the plaintiff gave him a foul berth, he must so plead. Before the Judicature Acts it was held that it was not sufficient for him simply to traverse the plaintiff's statements (*f*). But the plaintiff must prove his case, and where he fails to do so, he will not succeed merely because the defendant has in his defence told a story of the collision which he fails to prove (*g*). Where the defence is "inevitable accident," it is usual in terms so to plead. If the defence is that of compulsory pilotage, it is the practice, and it would seem to be necessary, for the defendant to plead it (*h*).

In an appeal (*i*) before the Privy Council the appellant will not be allowed to raise, for the first time, the question, not raised in the Court below or referred to in the pleadings, whether the respondent's ship was not also in fault for infringing one of the regulations. Where there is no allegation of contributory negligence, a party who pleads, and, in the Court below, relies on fault in the other ship alone, cannot for the first time upon the appeal raise the point of contributory negligence.

Judgment at law: whether it can be pleaded in Admiralty.

Prior to the Judicature Acts it was held that a verdict and judgment in an action at law that one of two ships, B., was in fault for the collision, and that the defendants, her owners, were liable to the plaintiffs for the amount of their loss, were

(*c*) *The Amalia*, Br. & L. 311, 314. See also *The Despatch*, Lush. 98; *The Lady Ann*, 7 Not. of Cas. 370; *The England*, 5 Not. of Cas. 170; *The East Lothian*, Lush. 241, 248.

(*d*) *The Aurora* and *The Robert Ingram*, Lush. 327, 329.

(*e*) For the old practice, see *The Virgil*, 2 W. Rob. 204; *The Ironmaster*, 6 Jur. N. S. 782.

(*f*) *The Why Not*, L. R. 2 A. & E. 265.

(*g*) See *The East Lothian*, Lush. 241.

(*h*) For the old practice, see *The Canadian*, 1 W. Rob. 243; *The Northampton*, 1 Sp. 155, note; *The Alhambra*, Br. & L. 286; *The European*, Williams & Bruce, 3rd ed. 354, note (*g*).

(*i*) *The Tasmania*, 15 App. Cas. 223; *The Pleiades* and *The Jane*, (1891) App. Cas. 259.

no bar to subsequent proceedings in Admiralty *in rem* against the ship A. by the defendants in the common law action; and that the judgment at law could not be pleaded or given in evidence in the Admiralty action (*k*). It is difficult to reconcile this decision with the principle that a decision in the presence of the parties upon the merits is *res judicata*; a principle which seems to apply whether the judgment is at law or in Admiralty proceedings *in rem*. Where a defendant at law pleaded a decree of the Admiralty Court upon the merits in his favour, it was held that the plea was bad, because it did not show that the Admiralty Court had jurisdiction (*l*).

Foreign judgment.

As to the effect in the Courts of this country of a foreign judgment in action relating to the collision, see above, pp. 211, 213.

Evidence. Logs.

It is not clear whether under 57 & 58 Vict. c. 60, ss. 239 (6), 240, the official log is admissible in evidence (*m*). The ship's log is not, though the mate who wrote it is dead (*n*). But both these documents often afford valuable evidence against the ship (*o*).

Depositions. Results of proceedings at inquiry, &c.

A protest (*p*), and a deposition made before a receiver of wreck (*q*), also the record of proceedings at an inquiry under the Merchant Shipping Acts (*r*), at a naval court-martial (*s*), at an inquiry by a pilotage authority (*t*), or at a coroner's inquest (*u*),—are not admissible in evidence, except for the

(*k*) *The Clarence*, 1 Sp. 206; but see *per* Knight-Bruce, L. J., 1 Sp. 209, note; and see *The Ann and Mary*, 2 W. Rob. 189; *semble*, the case referred to in *The Clarence*. See also *The Sylph*, L. R. 2 A. & E. 24; *The Antilope*, L. R. 4 A. & E. 33; *The Due Checchi*, L. R. 4 A. & E. 35, note.

(*l*) *Harris* v. *Willis*, 15 C. B. 710.

(*m*) There have been no decisions on this point.

(*n*) *The Henry Coxon*, 3 P. D. 156. In *The Singapore*, L. R. 1 P. C. 378, the ship's log, though objected to, appears to have been used as evidence for the ship.

(*o*) See observations by Westbury, C., in *The Singapore*, *supra*, as to the value of the ship's log as evidence against the ship, and as to alterations discrediting the log.

(*p*) *Christian* v. *Coombe*, 2 Esp. 489; *The Ljudica*, 23 L. T. 474; *The Emma*, 2 W. Rob. 315; *The Hedwig*, 1 Sp. 19. As to the value of such evidence, see *The Oscar*, 7 Not. of Cas. 507, 510.

(*q*) *The Little Lizzie*, L. R. 3 A. & E. 56; *Nothard* v. *Pepper*, 17 C. B. N. S. 39; *The Henry Coxon*, *ubi supra*. As to inspection of copies of these depositions furnished to the adverse party by the Board of Trade, see *The Palermo*, 9 P. D. 6.

(*r*) *The Mangerton*, Swab. 120; *The City of London*, Swab. 245.

(*s*) *H.M.S. Swallow*, Swab. 30 (the report of a naval officer to the Lords of the Admiralty is privileged as a State document, and no order to produce it will be made); *The Hellespont*, 2 Asp. 149.

(*t*) *The Lord Seaton*, 2 W. Rob. 391.

(*u*) *The Mangerton*, Swab. 120.

purpose of the cross-examination of a witness who has given evidence in chief inconsistent with his previous statements.

Protest; deposition before receiver of wreck.

The original depositions taken before the receiver must be produced, and copies cannot be put in (*x*). The Board of Trade usually refuses to supply copies of the depositions made by those on board one ship, unless those on board the other ship have also made them.

Coastguard and lightship logs.

Copies of entries in the official journals kept by coast-guardsmen, and copies of entries in lighthouse and lightship logs relating to the weather, are usually admitted in the Admiralty Division upon production of an affidavit by the proper officer (*y*).

Statements by master;

by seamen and others.

Statements by the master as to matters in issue are admitted to prove the facts stated against the owner (*a*); but not statements by other officers, by seamen (*b*), or by the pilot (*c*), though statements by seamen and others on board, made at the moment of collision, have in some cases been admitted as part of the *res gestæ* (*d*).

Letter by master to owner.

In an action by cargo-owner against shipowner for loss of cargo by stranding, a letter written by the master to the shipowner, detailing the facts of the stranding, was admitted as evidence of those facts (*e*).

Evidence in previous action.

Evidence in a previous action for the same collision, but between different parties, is not admissible in the subsequent action (*f*). But where, after judgment in an action by the owner of ship A. against the owner of ship B., the latter sued the former in a fresh action for the same collision, evidence

(*x*) It was so held by Butt, J., in *The Risca*, 25th March, 1886; *The Benayo*, 29th March, 1886; and (*semble*) by Dr. Lushington in *The Emperor* and *The Zephyr*, 12 W. R. 890; *The Oscar*, 12 W. R. 872. See also *per* Tindal, C. J., *Bastard* v. *Smith*, 10 A. & E. 213, 214; *Davies* v. *Davies*, 9 C. & P. 252; *Highfield* v. *Peake*, M. & M. 109; *Burnand* v. *Nerot*, 1 C. & P. 578; *Ewer* v. *Ambrose*, 4 B. & C. 25.

(*y*) An examined copy is sufficient: *The Maria des Dores*, Br. & L. 27; *The Catherina Maria*, L. R. 1 A. & E. 53.

(*a*) *The Midlothian*, 15 Jur. 806; *The Manchester*, 1 W. Rob. 63; *The Europa*, 13 Jur. 856; *The Aetæon*, 1 Sp. 176; *The Solway*, 10 P. D. 137. And so in America: *The Potomac*, 8 Wall. 590.

(*b*) *The Lord Seaton*, 2 W. Rob. 391, 393; *The Foyle*, Lush. 10; and see *The Great Eastern*, Holt, 169.

(*c*) *The Lord Seaton*, 2 W. Rob. 391, 393; *The Schwalbe*, Swab. 521.

(*d*) *The Schwalbe*, Swab. 521; *The Mellona*, 10 Jur. 992.

(*e*) *The Solway*, 10 P. D. 137. See *The Neptune the Second*, 1 Dods. 467, 469.

(*f*) *The William Hutt*, Lush. 25; *The Demetrius*, L. R. 3 A. & E. 523.

in the first action was allowed to be read in the subsequent action (*g*).

As to the mode of proving the regulations for preventing collisions at sea, see 57 & 58 Vict. c. 60, ss. 695, 719, 738. Regulations, how proved.

Where the defence raised is that of compulsory pilotage, and the defendant has reason to think that the pilot will be a hostile witness upon the facts of the collision, the proper course for him to take is to subpœna the pilot to produce his licence, and to be provided with evidence identifying him with the person named in the licence (*h*). Proof of compulsory pilotage where pilot is hostile.

There was at one time a doubt whether, in a collision action, interrogatories with respect to matters stated in the preliminary acts, and the other circumstances of the collision, could be administered. Interrogatories are admissible in some cases (*i*), but not in an ordinary collision action. Interrogatories.

In answering interrogatories, a defendant in a collision action must answer as to matters touching the collision which are in the knowledge of his servants or agents, the master and crew (*k*). Answering interrogatories.

It was formerly the practice, in the Court of Admiralty, where the plaintiff's ship was at anchor, or where the sole defence was inevitable accident, for the defendant to begin. This practice has been changed, and the rule now is that plaintiff shall in all cases begin (*l*); or, at least, in all cases where (as, *semble*, is always the case) the onus of proof is upon him (*m*). Who to begin in collision actions.

Power is given to any party to an Admiralty action to apply for an order for inspection of any ship or other personal or real property, the inspection of which may be material to the issue of the action (*n*). This power was exercised, in *The Magnet*, with reference to ship's lights (*o*); also in *The Ger-* Order to inspect.

(*g*) *The North American*, Lush. 80; *The Rossendale*, 2 Pritch. Ad. Dig. (ed. 1865) 591. See Ord. XXXVII. r. 3.

(*h*) See above, p. 225.

(*i*) *The Biola*, 34 L. T. 135.

(*k*) *The Radnorshire*, 5 P. D. 172; *The Isle of Cyprus*, 15 P. D. 134 (crew of plaintiff's ship drowned).

(*l*) See *The Otter*, L. R. 4 A. & E. 203; *The Benmore*, L. R. 4 A. & E. 132.

(*m*) See *supra*, p. 29, as to burden of proof.

(*n*) 24 Vict. c. 10, s. 18, and see now Ord. L. r. 3, of the R. S. C. 1883.

(*o*) L. R. 4 A. & E. 417, 429.

mania (*p*). In one case (*q*), it was held that the order will not be made where the party applying has an opportunity of proving the facts by evidence in the ordinary way.

Nautical assessors: evidence of experts not admissible.

In the Court of Appeal and in the Admiralty Division, nautical assessors advise the Court upon questions of seamanship. In the King's Bench Division, assessors are not, in practice, but may be (*r*), called in. In the King's Bench Division, matters of seamanship may be proved by experts; in Admiralty, and, it seems, in any Court where assessors are present to advise the Court, such evidence is not admissible (*s*). Thus in one case evidence directed to show what was the usual mode of navigating ships in the entrance to the Mersey was held to be inadmissible in the Admiralty Division (*t*).

Function of assessors.

The function of the assessors is not to decide questions of fact arising in the case (*u*), but to advise the Court upon nautical matters (*x*), and the decision of the case rests entirely with the judge. Even in purely nautical matters he is not bound to follow the advice of his assessors, if it does not agree with his own opinion (*y*), though their advice will be rarely questioned (*z*). The advice of the Trinity Brethren in the Admiralty Division upon a question of pure seamanship does not conclude the case, and may give rise to an appeal (*a*). If the Trinity Brethren differ in opinion, the

(*p*) 19 L. T. 20; 21 L. T. 44.

(*q*) *The Victor Coracevitch*, 10 P. D. 40.

(*r*) 36 & 37 Vict. c. 66, s. 56. For the old practice, see *Melton* v. *Nesbit*, 1 C. & P. 70; *Sills* v. *Brown*, 9 C. & P. 601; *Fenwick* v. *Bell*, 1 C. & K. 312.

(*s*) *The Gazelle*, 1 W. Rob. 471; *The Ann and Mary*, 2 W. Rob. 189, 196; *The No*, 1 Sp. 184; *The Sir Robert Peel*, 4 Asp. M. C. 321; *The Earl Spencer*, L. R. 4 A. & E. 431; *The Assyrian*, 6 Asp. M. C. 525.

(*t*) *The Kirby Hall*, 8 P. D. 71. But in *The Velocity*, L. R. 3 P. C. 44, such evidence (with reference to the Thames) was admitted. See also *The Andalusian*, 2 P. D. 231, as to proof of usual precautions at a launch in the Mersey. It seems that the Court will take the opinion of the assessors upon such points: *The Cambria*, Ad. Div. May, 1887.

(*u*) *The Gannet*, (1900) App. Cas. 204.

(*x*) *The City of Berlin*, (1908) P. 110. As to the practice in taking the opinion of the assessors and the character of the questions asked, see *The New Pelton*, (1891) P. 258; *The River Derwent*, 6 Asp. M. C. 467.

(*y*) See *The Magna Charta*, 1 Asp. M. C. 153; *The Aid*, 6 P. D. 84; *The Beryl*, 9 P. D. 137, 141; *The Swanland*, 2 Sp. 107; *The Fred*, 7 Asp. M. C. 550.

(*z*) "It would be impertinent in a judge not to consider as almost binding upon him the opinion of the nautical gentlemen who, having ten times his own skill, are called in to assist him." *Per* Brett, M. R., *The Beryl*, 9 P. D. 157, 141; and see *The Alfred*, 7 Not. of Cas. 352, 354; *The Gannet*, (1900) App. Cas. 234.

(*a*) See *The Falkland*, Br. & L. 204.

Court has on more than one occasion obtained the opinion of one or more of the other Brethren (*b*). In a case where the judge differed in opinion from the Trinity Brethren, and they reduced their views and the reasons for them to writing and at his request preserved them in case the Court of Appeal should call for them, that Court refused to order the Admiralty registrar to deliver to the appellants a copy of those reasons (*c*).

Plaintiff unsuccessful at law, or whose judgment is satisfied, cannot afterwards sue in Admiralty

He cannot sue at law and in Admiralty at same time.

A plaintiff who has been unsuccessful in an action at law tried upon the merits (*d*), or who has received payment of the sum for which he obtained judgment (*e*), cannot afterwards proceed against the ship in Admiralty for the same collision; nor would he be allowed to sue at law and in Admiralty at the same time for the same collision (*f*).

Consolidation of actions: cross actions.

In order to avoid multiplicity of actions, where the owners of two ships that had been in collision institute separate or cross actions against each other, the Court will consolidate the two actions (*g*), the litigant whose writ is first issued having the conduct, in other words the position of plaintiff.

Consolidation: actions by different plaintiffs against the same defendant.

Actions by different plaintiffs in respect of the same collision against the same ship or the same defendants may be consolidated in Admiralty, even as against an unwilling defendant, or at the instance of the defendant as against an unwilling plaintiff (*h*). And where two ships belonging to the same owners, one being disabled and in tow of the other, fouled a third ship, several actions by the owners and by the master and crew of the third ship against the two ships that fouled her were consolidated (*i*).

This practice of consolidating actions, which appears to have been peculiar to the Court of Admiralty, has been con-

(*b*) *The Magna Charta*, 1 Asp. M. C. 153; *The Friends' Goodwill* and *The Peggy*, Mars. Ad. Cas. 328.

(*c*) *The Banshee*, 6 Asp. M. C. 130.

(*d*) See *The Griefswald*, Swab. 430, 435.

(*e*) *The Orient*, L. R. 3 P. C. 696.

(*f*) *The John and Mary*, Swab. 471. In this respect the rights of a person entitled to a maritime lien differ from those of a mortgagee, who may pursue all his remedies at once.

(*g*) Judicature Act, 1873, s. 24, sub-s. 7. See *Thomson* v. *S. E. Ry. Co.*, 9 Q. B. D. 320. So 21 Vict. c. 10, s. 34, gave the Admiralty Court the same power.

(*h*) *The William Hutt*, Lush. 25; *The Melpomene*, L. R. 1 A. & E. 120; *The Talk*, 1 Asp. M. C. 592; *The Cumberland*, 5 L. T. 490.

(*i*) *The American* and *The Syria*, L. R. 1 A. & E. 226.

tinued since the Judicature Acts by the Admiralty Division (*k*). If actions are brought both by the owners of a ship, and by the owners of the cargo, the usual practice is to order a stay of the cargo action until after the decision in the ship action.

Where the actions are *in personam* and in one of them service of the writ has not been effected, consolidation will not be ordered (*l*).

Although it has the power to force consolidation upon unwilling parties, the present practice of the Admiralty Division is not to exercise that power (*m*); but a plaintiff who unreasonably objected to consolidation and afterwards succeeded in his action has been ordered to bear the costs occasioned by his objecting to consolidation (*n*).

The power of consolidating actions above referred to is wider than the general power given by Ord. XLIX. r. 8, although that power is exerciseable by a plaintiff as well as by a defendant (*o*). The practice adopted in other Divisions of trying one of several actions by different plaintiffs against the same defendants as a test action (*p*) does not appear to have been ever in use in Admiralty.

Plaintiff lying by to await judgment in other action.

Where the rights and liabilities of the parties can be fairly settled in the usual way upon claim and counterclaim, a party who, before bringing his action, awaits the decision of an action in respect of the same collision in which he is defendant, does so at the risk of having to pay costs (*q*).

Cross actions: one ship arrested, the other not: stay of proceedings.

Where there are cross actions or action and counterclaim, and the defendant ship in the principal action is arrested, if the plaintiff ship has been lost or for some other reason cannot be arrested, her owner may be compelled to give security for the amount claimed against him in the cross

(*k*) *E.g.*, *The Hector*, 8 P. D. 218. As to the effect of 24 Vict. c. 10, s. 34, see *The Demetrius*, L. R. 3 A. & E. 523.

(*l*) *The Helenslea*, 7 P. D. 57.

(*m*) *The Jacob Landstrom*, 4 P. D. 191; *The Vildosala*, 4 Asp. M. C. 228; *The Pasithea*, 5 P. D. 5: *The William Hutt*, *ubi supra*.

(*n*) *The Lord Strathnairn*, cited Williams & Bruce, 3rd ed. 392; and see *The Nicolina*, 2 W. Rob. 175; *The Bartley*, Swab. 198.

(*o*) *Martin* v. *Martin & Co.*, (1897) 1 Q. B. 429. As to substituting a plaintiff after decree, but before assessment of damages, see *The Duke of Buccleugh*, (1892) P. 201.

(*p*) See *Amos* v. *Chadwick*, 4 Ch. D. 869; *Bennett* v. *Lord Bury*, 5 C. P. D. 339.

(*q*) *The Calypso*, Swab. 28; *The Breadalbane*, 7 P. D. 186; *The Julia Fisher*, 2 P. D. 115.

action (*r*), or counterclaim (*s*). This rule has been applied where the parties are foreigners resident abroad (*t*), against a British subject resident in England (*u*), and against a foreign sovereign whose ship was privileged from arrest (*x*). The Act, which enables the Court to stay proceedings in this case applies only to actions *in rem*, and has no application where the principal action is one *in personam* (*y*).

Cross actions: one in County Court, the other in Supreme Court: transfer of County Court action.

Where actions in respect of the same collision are pending in the Admiralty Division and in a County Court at the same time, the practice is for the former Court upon application in that behalf being made to it under 31 & 32 Vict. c. 71, s. 6, to order that the County Court action be transferred to the Admiralty Division. The conduct of the consolidated action will usually be given to the plaintiff in the action which was first instituted (*z*), if there is a clear priority in time (*a*).

Separate actions for damage to property, and injury to person.

Damage to ship or goods and injury to person may be sued for in separate actions though the damage and injury were caused by the same negligent act, in the same collision, at the same time, and to the same person (*b*).

It has been held by the Court of Appeal that the High Court of Admiralty has no jurisdiction to entertain an action *in personam* against a pilot for a collision caused by his fault; and that a County Court has no power to entertain such an action in Admiralty (*c*).

Public Authorities Protection Act.

The Public Authorities Protection Act, 1893, limiting the period to six months after the default complained of, during which an action may be brought, does not apply to an action

(*r*) 24 Vict. c. 10, s. 34; *The Charkieh*, L. R. 4 A. & E. 120.

(*s*) *The Broadalbane*, 7 P. D. 186; *The Julia Fisher*, 2 P. D. 115; *The Newbattle*, 10 P. D. 33. Cf. *The Carnarvon Castle*, 3 Asp. M. C. 607, and disting. *The Alne Holme* (2nd action), 4 Asp. M. C. 592.

(*t*) *The Charkieh, ubi supra; The Julia Fisher, ubi supra.*

(*u*) *The Cameo*, Lush. 408.

(*x*) *The Newbattle*, 10 P. D. 33.

(*y*) *The Rougemont*, (1893) P. 275. *The James Westoll*, (1905) P. 47; 10 Asp. 29.

(*z*) *The Never Despair*, 9 P. D. 34; *The Immacolata Concezione*, 8 P. D. 34. See also *The Cosmopolitan*, *ibid.* 35; *The Bjorn*, *ibid.* 36, note.

(*a*) *The Mersey*, (1901) P. 369.

(*b*) *Brunsden* v. *Humfrey*, 14 Q. B. D. 712; 14 Q. B. D. 141.

(*c*) *Reg.* v. *Judge of City of London Court*, (1892) 1 Q. B. 273, following *The Uranie*, 5 L. T. 402; *The Alexandra*, L. R. 3 A. & E. 574; *Homer* v. *Bradley*, 44 L. J. Ex. 1. *The Bouresfield*, 5 Asp. M. C. 205; *The Germanic*, (1896) P. 84, where the Court refused to add a pilot as party in an action *in rem*.

in rem (*d*), nor does 6 & 7 Will. 4, c. 100 (local and personal), s. 8, by which no action in any of His Majesty's Courts of Law shall be brought against the Dublin Steam Packet Company unless a month's notice in writing shall have been given to the company (*e*).

Action at law supplemented by proceedings *in rem* and *vice versâ*.

Where proceedings had been taken *in rem* in Admiralty, and the amount realized by the sale of the ship was not sufficient to recompense the plaintiff, it was held, previously to the Judicature Acts, that he could bring his action at law for the residue of the loss (*f*). It would seem that he can now bring such supplemental action against the shipowner in person either in the Admiralty or in the King's Bench Division. On the other hand an action may be brought *in rem* for damages, which owing to the insolvency of the defendant, could not be recovered at law (*g*).

Recovery in an action *in rem* of damages in excess of the *res* or bail.

In a salvage action (*h*) *in rem* the writ was indorsed with a claim for 5,000*l*. The owners of the salved ship and cargo gave an undertaking to put in bail for 5,000*l*., and the ship and cargo were not arrested. The Court awarded for salvage 7,500*l*. The plaintiffs subsequently obtained leave (*i*) to amend the indorsement on the writ by altering the sum to 8,500*l*. The defendants paid 5,000*l*. and costs, but denied further liability. Upon a motion, which was, by consent, treated as an application for leave to issue execution for the balance of the 7,500*l*. against the owners, it was held that the owners were personally liable for the balance and were entitled to writs of *fieri facias* against their goods. Previously to this decision there had been great doubt and conflicting decisions as to the personal liability of shipowner or shipmaster for damages in a collision action, where the action was *in rem*, and the damages exceeded the value of the *res* or bail. Dr. Lushington had, in several cases (*k*), expressed the

(*d*) *The Burns*, (1907) P. 137.

(*e*) *The Longford*, 14 P. D. 34, following *The Mullingar*, 1 Asp. M. C. 252.

(*f*) *Nelson* v *Couch*, 15 C. B. N. S. 99; *The Bold Buccleuch*, 7 Moo. P. C. 267; *The Orient*, L. R. 3 P. C. 696, 702; *The Pet*, 20 L. T. 961; *The Zephyr*, 11 L. T. 351. See also *The Sylph*, L. R. 2 A. & E. 24.

(*g*) *The John and Mary*, Swab. 471; *The Bengal*, *ibid.* 468; *The Demetrius*, 41 L. J. Ad. 69; *The Sylph*, L. R. 2 A. & E. 24; *The Cella*, 13 P. D. 82.

(*h*) *The Dictator* (No. 2), (1892) P. 304; followed in *The Gemma*, (1899) P. 285.

(*i*) *The Dictator* (No. 1), (1892) P. 64.

(*k*) *The Hope*, 1 W. Rob. 154;

opinion that a personal action could not be "engrafted on" an action *in rem*; although in one (*l*) of these cases he appears to have been willing, in an action *in rem*, to monish the shipowners to pay damages not covered by the bail bond. On the other hand, Lord Stowell, in *The Dundee* (*m*), was clearly of opinion that the shipowner was liable in an action *in rem*, beyond the value of the *res*, to the full amount of the damages awarded. The judgment of Sir Francis Jeune, P., in *The Dictator*, No. 2, contains a full and luminous examination of the nature of the action *in rem*, and completely sets at rest the question at issue.

Re-arrest of ship to secure costs.

Where the shipowner appeared and defended the action, it was held that he could, by re-arrest of the ship, be compelled to pay costs (*n*), beyond the value of the ship and freight and the amount of his bail bond.

Damages for loss of life, no action in rem.

No action can be brought *in rem* for loss of life under Lord Campbell's Act. The conflict of authority (*o*) which existed for many years upon this point was, however, set at rest by the decision of the House of Lords in *The Vera Cruz* (No. 2) (*p*).

Third party procedure.

Where the defendant, in a collision action, claims to be entitled to recover from a third party the damages for which judgment may be given against him, attempts have been made to bring into the action such third party under Ord. XVI. rr. 48 *et seq.*, of the Rules of the Supreme Court. Thus, a ship in tow sued by a ship at anchor which she had fouled, sought to bring in the tug-owners as third parties, against whom they were entitled to indemnity (*q*). The judge refused

The Kalamazoo, 15 Jur. 885; *The Victor*, Lush. 72; *The Volant*, 1 W. Rob. 383; *The Zephyr*, 11 L. T. 351. Before the present century the master was generally a defendant in a suit *in rem* against the ship.

(*l*) *The Zephyr*, *ubi supra*.

(*m*) 1 Hag. 109.

(*n*) *The John Dunn*, 1 W. Rob. 159; *The Freedom*, L. R. 3 A. & E. 495. See also *The Volant*, 1 W. Rob. 383; *The Temiscouata*, 2 Sp. 208.

(*o*) See *The Sylph*, L. R. 2 A. & E. 24; *The Guldfaxe*, *ibid.* 325; *The Beta*, L. R. 2 P. C. 447; *The Borodino*, 5 L. T. 291; and *contra*, *Smith* v. *Brown*, L. R. 6 Q. B. 729; *Simpson* v. *Blues*, L. R. 7 C. P. 290. In *The Franconia*, 2 P. D. 163, the Court of Appeal was equally divided. See also *Taylor* v. *Dewar*, 5 B. & S. 58, and the observations of Sir R. Phillimore on that case, L. R. 2 A. & E. 329.

(*p*) 10 App. Cas. 59. See also *The Circe*, (1906) P. 1. The law in Canada seems to be the same. See *Monaghan* v. *Horn*, *The Garland*, 7 Duval's Sup. Ct. Rep. Canada, 409; 10 Viet. c. 21 (Canada), 26 & 27 Viet. c. 10 (Vice-Ad. Ct. Act), ss. 7, 13.

(*q*) *The Branca*, 8 P. D. 91. See also *The Cartsburn*, 5 P. D. 55.

to entertain the question of the liability of the tug-owners. The rules in question apply only where the right to contribution or indemnity is founded upon contract, express or implied; they do not apply where the right of the defendant is to recover against a person, not a party to the principal action, damages to the same amount as the damages awarded in the action (*r*).

Joinder of co-defendants.

Where there is a reasonable doubt as to who is liable, as in the case of collision with a tug or tow, or where the ship sued may have been acting under the orders of a dock authority, the tug and tow, or the ship and dock owners, may be joined as co-defendants (*s*).

Failure to put in bail, after undertaking.

Where the solicitors for the owners of the ship sued accepted service of the writ and undertook to put in bail, but before doing so their authority was withdrawn, it was held that they were not liable to attachment for contempt in not fulfilling their undertaking (*t*).

Arrest of wrong ship.

It has occurred in some cases that the plaintiff has failed to identify the ship sued with the ship with which his own has been in collision. So where, in consequence of a collision between A. and B., a third ship, C., is injured, C. may be in a difficulty as to which ship to sue. It seems that if the wrong ship is arrested, she would, except in special circumstances, be entitled to costs, and, in flagrant cases, to damages and costs (*u*), or to her expense of procuring bail (*x*). In the absence, however, of malice and gross negligence on the part of the plaintiff, damages, and even costs, have not in all cases been given to the ship wrongly arrested (*y*). To entitle the plaintiff in an action for wrongful arrest to damages, it is not necessary to prove actual damage, if the arrest was without reasonable cause (*z*).

(*r*) *The Jacob Christenson*, 8 Asp. M. C. 21; *Speller* v. *Bristol Steam Navigation Co.*, 13 Q. B. D. 96; *Carshore* v. *North Eastern Rail. Co.*, 29 Ch. D. 344.

(*s*) *The River Lagan*, 6 Asp. M. C. 281; *The Mystery*, (1902) P. 115.

(*t*) *The Anna and Bertha*, 7 Asp. M. C. 31.

(*u*) *The Evangelismos*, Swab. 378; 12 Moo. P. C. 352; *The Active*, 5 L. T. 773; *The Strathnaver*, 1 App. Cas. 58; *The Cheshire Witch*, Br. & L. 362; *The Catheart*, L. R. 1 A. & E. 314, 333; *The Volant*, Br. & L. 321; *The Glasgow*, Swab. 145; *The Victor Lush*, 72; *The Egerateia*, 38 L. J. Ad. 40.

(*x*) *The Collingrove*, 10 P. D. 158.

(*y*) *The Evangelismos*, Swab. 378; *The Strathnaver*, 1 App. Cas. 58.

(*z*) *The Walter D. Wallet*, (1893) P. 202.

If a ship is arrested without reasonable cause, as where the owners' solicitors sign an undertaking to give bail, and no objection or inquiry is made as to the sufficiency of the undertaking, the plaintiffs will be condemned in damages and costs (*a*). Arrest after undertaking to give bail.

By 57 & 58 Vict. c. 60, s. 504 (*b*), jurisdiction is given to the High Court (*c*), in proceedings by a shipowner to limit his liability under the Act, to determine the amount of such liability, and to distribute the sum representing the amount of such liability amongst the several claimants; and further, to stay actions pending in respect of the collision. Actions for limitation of liability.

The benefit of the enactment limiting the shipowner's liability is ordinarily obtained by instituting an action in which the plaintiff claims a declaration by the Court to the effect that the plaintiff and his vessel are not answerable in damages to an amount exceeding, as the case may be, 8*l.* or 15*l.* per ton of the ship's tonnage. Upon payment into Court of the 8*l.* per ton and interest at 4*l.* per cent. from the date of the collision; and in case of loss of life or personal injury, upon payment into Court, or bail being given, for the additional amount up to 15*l.* per ton, or such smaller sum as the Court specifies; and upon payment into Court also of the costs of actions already instituted against the plaintiff in respect of the collision, the Court will make the declaration claimed, and thereupon all actions in respect of the collision for loss of life or injury to ship, cargo, or persons on board, will be stayed (*d*).

The benefit of the statutory limitation of liability may also be claimed by way of defence or counterclaim in the collision action (*e*). Limited liability may be claimed in defence.

(*a*) *The Crimdon*, (1900) P. 171.

(*b*) The previous enactments on the subject were 17 & 18 Vict. c. 104, s. 514, and 53 Geo. 3, c. 159, s. 7.

(*c*) By R. S. C. Merchant Shipping, 1894, r. 1, this jurisdiction is assigned to the Admiralty Division. The Act, 24 Vict. c. 10, s. 13, and the decisions thereon, *James* v. *L. & S. W. Rail. Co.*, L. R. 7 Ex. 187, 287; *The Northumbria*, L. R. 3 A. & E. 24; *The Foscolino*, 5 Asp. M. C. 420, seem to be obsolete. The above rule reproduces the provisions of the Judicature Act, 1873, and 25 & 24 Vict. c. 120.

(*d*) For details of practice in these actions, see Williams & Bruce, Ad. Pr. 3rd ed. pp. 377 *seq.*

(*e*) See *The Clutha*, 15 L. J. Ad. 108; *Wahlberg* v. *Young*, 45 L. J. C. P. 783; *The Sisters*, 1 P. D. 284. But see *James* v. *L. & S. W. Rail. Co.*, *infra*.

Costs of limitation action.

The plaintiff, in an action for limitation of liability, is required to pay the costs of the action, other than costs occasioned by disputes between rival claimants to the fund, and also the costs of actions stayed at his request (*f*). Where the defendant raises and fails upon special issues, he will have to bear the costs of such issues (*g*).

Evidence in limitation actions by affidavit.

The practice of the Admiralty Division in actions for limitation of liability, where no special defence is raised, is for the evidence to be taken by affidavit.

Admission of liability.

There was formerly doubt as to whether, in an action for limitation of liability, the plaintiff must admit that his vessel was in fault (*h*). By the present practice of the Admiralty Division it appears that such an admission is not necessary (*i*), though it is usual.

Cargo-owner may in limitation action raise question whether one or both ships in fault.

An agreement between the shipowners that both ships, A. and B., were in fault for the collision does not prevent the owner of cargo on board one of them, B., from alleging, in an action by the owner of the other, A., to limit his liability, that A. was alone in fault; and he is entitled to an issue to decide that question (*k*).

Payment out of Court of unappropriated balance.

After the expiration of the time (usually three months) specified in advertisements issued by the Court in a limitation action for the bringing in of claims for loss of life, an unappropriated balance of the sum paid into Court, which remained after payment of all claims which had been successfully prosecuted, was ordered to be paid to the plaintiffs in the limitation action, although all the possible claims had not been brought in, and the year within which under Lord Campbell's Act had not expired (*l*).

Transfer of action from King's Bench

Where the owners of a ship found alone to blame for a collision had obtained in the Admiralty Division a judgment

(*f*) *African Steamship Co.* v. *Swanzy*, 2 K. & J. 660; *The Empusa*, 5 P. D. 6.

(*g*) *The Empusa*, 5 P. D. 6; *The Warkworth*, 9 P. D. 20, 145.

(*h*) *The Amalia*, Br. & L. 151; *Hill* v. *Audus*, 1 K. & J. 263; *James* v. *L. & S. W. Rail. Co.*, L. R. 7 Ex. 187; *ibid.* 287; *Miller* v. *Powell*, 2 Ct. of Sess. Cas. 3rd ser. 976. In *Hill* v. *Audus* the bill was not dismissed for want of jurisdiction, but the injunction to restrain a particular action was refused. See *per* Willes and Blackburn, JJ., L. R. 7 Ex. 291, 295.

(*i*) *The Sisters*, 1 P. D. 281. And see *The Amalia*, Br. & L. 151. The latter decision was, however, doubted in *The Karo*, 13 P. D. 24, at p. 29. See the report of the case in 6 Asp. M. C. at p. 247.

(*k*) *The Karo*, 13 P. D. 24.

(*l*) *The Alma*, (1903) P. 55.

limiting their liability, an action pending in the Queen's Bench Division for damages for personal injuries sustained in the collision was transferred to the Admiralty Division (*m*).

to Admiralty Division, after judgment limiting liability.

In an action (A) and counterclaim for a collision between *The Bellcairn* and *Britannia*, a judgment by consent was made dismissing action and counterclaim. Subsequently owners of cargo on board *The Britannia* brought their action (B) against *The Bellcairn*. In this action both ships were found to be in fault. *The Britannia* owners then instituted an action (C) for limitation of their liability, and obtained the usual judgment. Thereupon the owners of *The Bellcairn*, having, with the consent of *The Britannia* owners, induced the assistant registrar to rescind the judgment by consent in action (A), sought to claim for damage to *The Bellcairn* against the fund paid into Court in the limitation action (C) in competition with the cargo-owners. It was held that the rescission of the judgment in action (A) was *ultra vires*, that *The Bellcairn* owners were estopped from bringing any further action against *The Britannia*, and that they could not claim against the fund in Court (*n*). But the case is different where the agreement entered into as to the first action (A) results in a discontinuance of that action. In such a case one of the parties is not estopped from asserting a claim against a fund paid into Court in a limitation action by the other party (*o*).

Proof against the fund estopped.

Where cargo-owners had recovered judgment against the other ship, and the owners of the carrying ship, after judgment in the cargo-owners' action, brought their action against the other ship, and the damages in the two actions exceeded the statutory amount of the shipowners' liability, whilst the damages in the cargo-owners' action did not exceed that amount, the Court refused to stay proceedings in the cargo-owners' action until judgment was delivered in the shipowners' action (*p*). The object of the plaintiff in the second action was to share *pari passu* with the cargo-owners in the fund to which the shipowners' liability was limited.

Successive actions by cargo-owner and ship-owner; no stay of proceedings.

(*m*) *Hawkins* v. *Morgan*, 49 L. J. Q. B. 618.

(*n*) *The Bellcairn*, 10 P. D. 161.

(*o*) *The Ardandhu, Owners of the Cargo of the Kronprinz* v. *Owners of the Kronprinz*, 11 P. D. 40; 12 App. Cas. 256.

(*p*) *The Alm Holme* (first action), 4 Asp. M. C. 593.

Damages assessed by registrar and merchants: question of consequential damages may be decided at the hearing.

It is the practice in Admiralty to refer all questions as to the amount of damages to the registrar, assisted by merchants (*q*); but where the question is raised by the pleadings, it is in the discretion of the Court to decide at the hearing of the action whether a particular item of loss arising after the collision is recoverable as damages in the action.

In exercising its discretion, the Court will be guided by the consideration whether the matter is one which can be dealt with better by the Court and its nautical assessors at the hearing, than later by the registrar and a Trinity Master; who now frequently attends references (*r*).

Lord Campbell's Act: assessment of damages by jury.

Where an action under Lord Campbell's Act for damages was instituted in the Admiralty Division, and no application for a transfer of the action to the Queen's Bench Division having been made, judgment was given for the plaintiffs upon default of pleading by the defendants, it was held, by Sir J. Hannen, that the plaintiffs were entitled to have the amount of the damages assessed by a jury in accordance with the terms of Lord Campbell's Act (*s*).

Surety in Admiralty bond may recover against co-owner.

Where a part-owner, without the knowledge of his co-owner, executed a bond to obtain the release of his ship from arrest in a damage action, and subsequently became bankrupt, it was held that a surety who had been compelled to pay the amount of the bond could recover against the co-owner (*t*).

Master's liability on bond to prevent arrest of ship abroad.

The master of a vessel which, by the master's fault, had been in collision with another in a foreign port, in order to prevent her arrest, and in the interest of her owners, gave a bond in the names of himself and the shipowners to cover the damage to the other ship. In an action by the master against the ship for wages and disbursements, he claimed the amount of the penalty of the bond, and also the sum paid by him for repairs to his ship rendered necessary by the collision. It was held that he was not entitled, as against mortgagees of the ship, to have paid into Court the amount of the penalty

(*q*) This is the practice in actions for damage to cargo under 24 Vict. c. 10, s. 6, as well as in damage actions: *The St. Cloud*, Br. & L. 4.

(*r*) *The Maid of Kent*, 6 P. D. 178.

(*s*) *The Orwell*, 13 P. D. 80.

(*t*) *Barker* v. *Highley*, 15 C. B. N. S. 27.

of the bond so as to meet claims against him in respect thereof (*u*).

Collisions abroad, and between foreign ships

The jurisdiction of the Courts of this country in respect of collisions on the high seas, and in the territorial waters of foreign countries, and also where one or both the ships are foreign, is considered in a former chapter (*x*).

Admiralty jurisdiction of High Court of Justice

The Admiralty jurisdiction of the High Court of Justice is co-extensive, geographically, with that of the late High Court of Admiralty; the jurisdiction of the latter Court having, by the Judicature Act, 1873, been transferred to the High Court of Justice (*y*). The jurisdiction of the Court of Admiralty extended to all collisions upon the high seas (*z*), and upon tidal waters not within the body of a county (*a*). By 3 & 4 Vict. c. 65, s. 6, its jurisdiction was extended to (amongst other things) claims for damage received by "any ship or sea-going vessel" within the body of a county; and by 24 Vict. c. 10, ss. 2, 7, it was further extended to claims for damage done by "any description of vessel used in navigation not propelled by oars." It appears that these statutes covered every case of collision between craft of all sorts, except a collision within the body of a county between lighters or other craft both of which are propelled by oars only. Thus, it was held that where the collision was within the body of a county, and the damage was done by a steamship to a barge, the case was covered by 24 Vict. c. 10, s. 7 (*b*); and where the collision was within the body of a county, and the damage was done by a barge to a steamship, the case was covered by 3 & 4 Vict. c. 65, s. 6 (*c*). But where the collision was within the body of a county, and the damage was done by one Thames lighter (propelled by oars only) to another similar craft, the Admiralty Court had no jurisdiction (*d*). Consequently, in the last-mentioned case, it seems that though the Admiralty Division has jurisdiction

(*u*) *The Limerick*, 1 P. D. 411; reversing, 1 P. D. 292.

(*x*) *Supra*, pp. 198 *seq.*

(*y*) 36 & 37 Vict. c. 66, s. 16.

(*z*) *The Sarah*, Lush. 549.

(*a*) 13 Ric. 2, st. 1, c. 5; 15 Ric. 2, c. 3.

(*b*) *The Malvina*, Lush. 493; Br. & L. 57. This case was not within 3 & 4 Vict. c. 65, s. 6. *The Bulow*, Lush. 149.

(*c*) *Parkis* v. *Flower*, L. R. 9 Q. B. 111.

(*d*) *Ferrard* v. *Kendall*, L. R. 6 C. P. 128. But see on this case *The Rona*, 7 P. D. 217.

as a Division of the High Court of Justice, there is no damage lien. The Acts above mentioned gave the Admiralty Court jurisdiction in the case of damage by any craft not propelled by oars to a floating landing-stage within a county (*e*), to oysters on an oyster-ground (*f*), and also to any sort of craft or other property afloat (*g*), whether by collision with other craft or not (*h*).

The High Court of Admiralty had inherent jurisdiction over every sort of collision and damage to property occurring on the high seas (*i*), and this jurisdiction is now possessed by the High Court of Justice.

The Acts above mentioned, which alternately restricted and enlarged the jurisdiction of the Court of Admiralty, are now of importance only in connection with questions of maritime lien, and questions touching the jurisdiction of County Courts (*k*).

Ship not arrested; judgment by default.

Where in an action *in rem* the writ was duly served within the jurisdiction, but before service of the warrant to arrest the ship was taken out of the jurisdiction, it was held that judgment could, nevertheless, go against the ship (*l*).

(*e*) *The Veritas*, (1901) P. 304.

(*f*) *The Swift*, (1901) P. 168. As to damage to oysters improperly laid, see *Petrie* v. *Owners of The Rostrevor* (1898), 2 Ir. 556.

(*g*) For the meaning of "ship" in sect. 458 of 17 & 18 Vict. c. 104, see *The Mac*, 7 P. D. 38; on app. *ibid.* p. 126; and elsewhere in the same Act, *The C. S. Butler*, L. R. 4 A. & E. 238; *Ex parte Ferguson*, L. R. 6 Q. B. 280; of "vessel" in 10 & 11 Vict. c. 27, s. 3, see *Hedges* v. *London and St. Katharine's Docks Co.*, 16 Q. B. D. 597.

(*h*) *The Zeta*, (1893) App. Cas. 468 (collision with pier head).

(*i*) *The Sarah*, Lush. 549.

(*k*) For detailed information on this subject, see Admiralty Jurisdiction and Practice of County Courts, by Raikes & Kilburn.

(*l*) *The Nautik*, (1895) P. 121.

CHAPTER XIII.

COSTS.

General rule—costs follow event.

Costs are in the discretion of the Court (*a*), but the general rule in a collision action, in which the owners of the two ships are plaintiff and defendant, is that costs follow the event of the action, that is to say, those of the successful party must be paid to him by the unsuccessful party, so far as they are allowed on taxation. Therefore, if the collision is found to have been caused by the fault of the defendant ship alone, the plaintiff is given the costs of the action; if his ship was alone in fault, or he fails to prove fault in the defendant ship, he will be condemned in costs. But the rule, as has been said, is discretionary, and there is an instance of an unsuccessful plaintiff not being condemned in costs, although the only special circumstance was the difficulty of proof, owing to the collision having occurred in a dense fog (*b*).

Both ships in fault.

Where both ships are in fault, the rule is that each party, whether the plaintiff sues as shipowner, cargo-owner, or otherwise (*c*), bears his own costs (*d*). This rule applies whether there is or is not a counterclaim (*e*); also where the fault of one of the ships is the fault of her compulsory pilot (*f*). Where a defendant, before statement of claim

(*a*) Ord. XLV. r. 1; as to the limit of this discretion, see *Re Mills' Estate*, 34 Ch. D. 24.

(*b*) *The Sardinian*, Ad. Div. 9th Dec. 1886.

(*c*) *The City of Manchester*, 5 P. D. 221; *The Vera Cruz*, 9 P. D. 88.

(*d*) *The Washington*, 5 Jur. 1067; *The Telegraph*, 1 Sp. 427; *Wilson* v. *Canada Shipping Co.*, *The Lake St. Clair* and *The Underwriter*, 2 App. Cas. 389; *The Agra* and *The Elizabeth Jenkins*, L. R. 1 P. C. 501; *The Lorebird*, 6 P. D. 80. The rule formerly was that the costs of the action were divided, and one half borne by each party. The present practice is said to have been introduced by Lord Stowell (*per* Lord Blackburn, 7 App. Cas. 818; *sed vide* 1 W. Rob. 21), in order to avoid the cost of apportionment (*per* James, L. J., *The City of Manchester*, 5 P. D. 221), or as part of the discipline of the seas, so that neither of two wrong-doing ships should gain anything by the litigation. (*Per* Brett, L. J., *The Hector*, 8 P. D. 218, *sed qu.*)

(*e*) *The Rigborgs Minde*, 8 P. D. 132.

(*f*) *The Rigborgs Minde*, 8 P. D. 132; *The Hector*, 8 P. D. 218.

delivered, admitted that his vessel was in fault, and pleaded the admission in his statement of defence, and the Court found that both ships were in fault, the plaintiff was ordered to pay the costs incurred after the defendant's admission (*g*). And so, where the plaintiffs, in their statement of claim, admitted that they were to blame, but alleged that the defendants were also to blame, which the Court found to be the fact, the plaintiffs were held entitled to costs (*h*). In both these cases, therefore, the successful party on the issue before the Court obtained his costs.

Inevitable accident.

It was formerly a rule (*i*) of the Admiralty Court that where the collision occurred without fault in either ship—the so-called case of inevitable accident—provided the plaintiff was not unduly rash in bringing his action (*k*), no costs were given on either side. In a case decided by Sir R. Phillimore since the Judicature Acts, where the collision was held to have occurred without fault in the defendant, no order was made as to costs. But this was an exceptional case, because a ground of the decision was that the defendant's ship had unavoidably a riding light exhibited, though she was not at anchor (*l*). Now, however, there is a general rule that, in the absence of special circumstances, costs should follow the event of the action in cases of collision by "inevitable accident," as in other cases (*m*).

Where the plaintiffs, in their reply, admitted that the collision was an inevitable accident, the defendants, upon motion for judgment, obtained judgment with costs (*n*).

Arrest of wrong ship.

Where the plaintiff failed to identify the ship arrested as the ship with which his own had been in collision, the action was dismissed with costs (*o*). It seems that, to entitle the defendant in such a case to damages for the wrongful arrest

(*g*) *The Ebor*, cited Williams & Bruce, 3rd ed. 98.

(*h*) *The General Gordon*, 6 Asp. M. C. 533; reversed on the facts, Feb. 18th, 1891.

(*i*) *The Itinerant*, 2 W. Rob. 236; *The London*, Br. & L. 82, followed by the Privy Council in *The Marpesia*, L. R. 4 P. C. 212.

(*k*) For an instance, see *The Thornley*, 7 Jur. 659.

(*l*) *The Buckhurst*, 6 P. D. 152.

(*m*) *The Monkseaton*, 14 P. D. 51, followed in *the Batavier*, 15 P. D. 37.

(*n*) *The Naples*, 11 P. D. 124.

(*o*) *The Evangelismos*, Swab. 378; 12 Moo. P. C. 352; *The Active*, 5 L. T. 773; *The Strathnaver*, 1 App. Cas. 58. See also *The Peri*, 32 L. J. Ad. 46.

of his ship, gross negligence, equivalent to malice, must be proved against the plaintiff (*p*).

The decisions in Admiralty in which a successful defendant has been required to bear his own costs, so far as they conflict with the practice of the other Divisions of the High Court, would probably not now be followed (*q*).

Costs refused: violence of crew.

The ship that succeeded in a collision action was in one case deprived of her right to costs by reason of the violence of her crew to those on board the other ship at the time of the collision (*r*); and in another case (before the statutory rule as to standing by was in force), a vessel was deprived of her costs by reason of her failure to stand by and assist the other ship (*s*).

Cargo-owner claiming defendant's ship to be alone in fault where both are in fault.

The owner of cargo who sues the ship with which the carrying ship has been in collision will not get his costs if he claims that the ship sued is alone in fault, and it is held that both ships are in fault (*t*). It has been said that the strict course in such a case is to give the plaintiffs the costs of the issue upon which they succeed, and to make them pay the costs of the issue on which they fail. But, to avoid the expense of such an apportionment, it was held in *The City of Manchester* that no order should be made as to costs (*u*).

In an action by the owners of a barge against her tug and a steamship with which she had been in collision, the owners of the steamship having attempted to cast the whole blame on the tug, their vessel was found alone to blame, and they were ordered to pay the costs, both of their co-defendants and of the plaintiffs (*x*).

Costs in case of collision with one of his Majesty's ships.

In the case of a collision with a King's ship, the Crown used to conform to the practice of the Court as to payment of costs (*y*), and now by the Admiralty Suits Act, 1868, the

(*p*) See cases cited in last note, and p. 297, *supra*.

(*q*) *The General Steam Navigation Co.* v. *London & Edinburgh Shipping Co.*, 2 Ex. D. 467; *The Monkseaton*, 14 P. D. 51; and see *per* Butt, J., *The Naples*, 11 P. D. 124; *The Batavier*, 15 P. D. 37.

(*r*) *The Catalina*, 2 Sp. 23.

(*s*) *The Celt*, 3 Hag. Ad. 321.

(*t*) *The City of Manchester*, 5 P. D. 221, reversing the decision of the Court below; *The Hibernia*, 2 Asp. M. C. 454. *The Milan*, Lush. 388, would not, it seems, now be followed on this point.

(*u*) See *per* James, L. J., 5 P. D. at p. 223. Baggallay, L. J., in the same case thought that neither party should get any costs.

(*x*) *The River Lagan*, 6 Asp. M. C. 281, followed in *The Mystery*, [1902] P. 115.

(*y*) *H.M.S. Swallow*, Swab. 30.

Admiralty, if it brings an action, is liable to pay or receive costs according to the ordinary practice (*z*).

Defence of compulsory pilotage.

A defendant who, admitting that his ship was in fault for the collision, raises and succeeds upon the defence of compulsory pilotage, will obtain his costs (*a*); and costs were given to a defendant who in his pleadings alleged that his ship was not in fault, but at the trial abandoned this defence and relied solely upon his alternative plea of compulsory pilotage (*b*); again where, defending the case upon the merits, he fails, though he raises also, and succeeds upon, the defence of compulsory pilotage, he will—the plaintiff having failed in his action—be given his costs (*c*). But if the defendant, in addition to defending the case on its merits, has set up a counterclaim, it will be dismissed with costs (*d*). So, before the Judicature Acts, where there were cross actions, and the collision was held to have been caused by the compulsory pilot of the plaintiff ship, the plaintiff's action was dismissed with costs, and the defendant's cross action without costs (*e*). The above was formerly the practice in the Admiralty Court and Privy Council (*f*); it has been followed since the Judicature Acts by the Court of Appeal and the Admiralty Division (*g*). But in the Exchequer Division this practice was on one occasion not followed, and the plaintiff was ordered to pay the defendant's costs (*h*). In *The Hankow* (*i*) the uncertainty of the law as to compulsory pilotage was assigned as a reason for not giving costs. Where, upon the defendant delivering his defence alleging that the collision

(*z*) 31 & 32 Vict. c. 78, s. 5.

(*a*) *The Royal Charter*, L. R. 2 A. & E. 362; *The Schwann*, L. R. 4 A. & E. 187; *The Juno*, 1 P. D. 135; *The Winston*, 8 P. D. 176; *The Charlton*, 8 Asp. M. C. 29.

(*b*) *The Oakfield*, 11 P. D. 34.

(*c*) *The Burma*, 8 Asp. M. C. 547; *The Somerset*, May 25th, 1909 (Shipping Gazette); following *The Courier* (1891) and *The Nellie* (1896). The former practice was otherwise: *The Schwann*, L. R. 4 A. & E. 187; and was followed by Bargrave Deane, J., in *The Celtic*, July 19th, 1909 (Shipping Gazette), but on special grounds.

(*d*) So held, after reserving the point for inquiry, in *The Ruby*, 15 P. D. 139. In *The Princeton*, 3 P. D. 90, and *The Mercurius*, Ad. Div. June, 1887, no costs were given, either of action or counterclaim; but the point does not appear to have been argued, at least in the former case.

(*e*) *The Annapolis*, Lush. 295, 313.

(*f*) *The Innisfail*, 3 Asp. M. C. 337; *The Princeton*, 3 P. D. 90.

(*g*) *The Matthew Cay*, L. R. 5 P. D. 49; *The Daioz*, 3 Asp. M. C. 477; *The Rigborgs Minde*, 8 P. D. 132.

(*h*) *General Steam Navigation Co.* v. *London and Edinburgh Shipping Co.*, 2 Ex. D. 467.

(*i*) 4 P. D. 197.

was caused by the fault of the compulsory pilot in charge of his ship, the plaintiff discontinued his action. Butt, J., held that the plaintiff must pay the defendant's costs, upon the ground that there were no facts before him upon which he could exercise a discretion (*k*).

The rule as to no costs being given where both ships are in fault applies where the fault is that of a compulsory pilot (*l*).

Judgment with costs cannot be altered.

In an action in the City of London Court, after judgment for the plaintiff with costs, and before the reference, the defendant paid into Court a sum which at the reference was found sufficient to cover the damages. The judge thereupon altered his judgment as to the costs of the action, and ordered the plaintiff to pay them. It was held by the Court of Appeal that he had no power to make such an order (*m*).

Costs of the reference.

The costs of a reference do not follow the costs of the action (*n*), for the investigation before the registrar is in the nature of a new litigation, and the costs of it are in the discretion of the registrar (*o*), subject to an appeal to the Court. The general rule now is that except under special circumstances, the claimant is entitled to his costs, irrespective of the proportion which the amount allowed bears to the amount claimed. The rule is the same whether one or both ships are in fault (*p*); whether the claim is by an owner of ship or of cargo (*q*); whether the claimant is plaintiff or defendant claiming upon a counterclaim (*r*); and whether, both ships being in fault, proceedings upon the reference have been taken with respect to the damage to one or both ships (*s*). Where at the reference in a limitation action an exorbitant claim was made, the claimant was ordered to bear his own costs (*t*), and where in a limitation action the cargo owners contested the ship claim

(*k*) *The J. H. Henkes*, 12 P. D. 106. Butt, J., expressed an opinion that the practice as to costs should be uniform in all Divisions of the High Court.

(*l*) *The Rigborgs Minde*, 8 P. D. 132; *The Oakfield*, 11 P. D. 34.

(*m*) *The Recepta*, (1893) P. 255, 265.

(*n*) Formerly a different practice prevailed: see *The Peerless*, 6 L. T. 107.

(*o*) S. C. Rules, Ord. LVI. r. 8; *The Friedeberg* (1885), 10 P. D. 112.

(*p*) *The Consett*, 5 P. D. 52; *The Savernake*, 5 P. D. 166; and *The Mary*, 7 P. D. 201, both were in fault.

(*q*) In *The Consett*, 5 P. D. 52, 77, the claim was by cargo-owner.

(*r*) In *The Mary* both plaintiff and defendant got their costs.

(*s*) In *The Savernake*, 5 P. D. 166, it did not appear that before the reference any proceedings had been taken by one of the ships.

(*t*) *The Rijnstroom*, 8 Asp. M. C. 538.

and reduced it materially on the point whether the ship was or was not a constructive total loss, the ship claimants were ordered to pay the costs of the cargo owners over and above the costs of the cargo owners in proving their claim (*u*).

Report of registrar as to costs.

The report of the registrar is seldom disturbed (*x*). Where there is no report, an order as to the costs will be made upon motion by the Court (*y*).

Costs of appeal from registrar.

The costs of an appeal from the registrar, as a general rule, follow the result of the appeal (*z*).

Costs in Court of Appeal.

The cardinal principle in regard to the costs of an appeal is that costs shall be given to the successful party whether appellant or respondent; thus where the Court below held one ship only to blame, and such ship appealed, and admitting that it was to blame, claimed that the other ship was also to blame, and this contention succeeded, it was held that the appellant was entitled to the costs of the appeal (*a*).

In *The Ann* (*b*) the Privy Council dismissed the appeal, but without costs, because, although the appellant's ship had been found solely in fault in the Court below, whereas in the opinion of the Privy Council she was free from blame, the appellant had in his pleadings alleged that the collision was caused by his adversary's ship starboarding, the fact being that she had caused the collision by not porting in time. A similar order was made where, both ships having been held in fault in the Court below, it was held upon appeal that neither was in fault (*c*).

On the principle above stated (*d*), the Court of Appeal, reversing the decision of the Court below, having found the collision to have occurred without fault in either ship, the ship sued was given her costs both of the appeal and in the Court below (*e*).

(*u*) *The Chatham* (1907), Fo. 460, Ad. Court, October 26th, 1908.

(*x*) *The Consett*, 5 P. D. 77; *The Savernake*, 5 P. D. 166.

(*y*) *The Mary*, 7 P. D. 201.

(*z*) *The Black Prince*, Lush. 568; *The Parana*, 1 P. D. 452; 2 P. D. 118; and recent unreported cases, *e.g.*, *The Lindisfarne* (1908), Fo. 604.

(*a*) *The London*, (1905) P. 152; 10 Asp. 109; *The Anselm*, (1907) P. 151; *The Ceto*, 14 App. Cas. 670; 6 Asp. 479. These cases clearly overrule such decisions as *The Heetor*, 8 P. D. 218, and *The Rigborgs Minde*, 8 P. D. 132.

(*b*) Lush. 55.

(*c*) *The Utopia*, (1893) App. Cas. 492.

(*d*) Notwithstanding *The Swansea* and *The Condor*, 4 P. D. 115, and *The Milanese*, 4 Asp. M. C. 318.

(*e*) *The Monkseaton*, 14 P. D. 51; but see *The Marpesia*, L. R. 4 P. C.

Likewise where both ships are held in fault in the Court below, and upon the appeal by one of the parties the other party applies to have the judgment varied or reversed, and the Court of Appeal affirms the decision of the Court below, the appellant will be ordered to pay the costs of the appeal, except so far as they have been augmented by the notice given by the respondent (*f*).

Where in the Court below both ships are held in fault, and one only of them appeals, and the appeal is dismissed, the appellant will be ordered to pay the costs of the appeal (*g*).

Where, upon a claim and counterclaim, ship A. is held solely in fault, and upon appeal the decision is reversed, and ship B. held solely in fault, the appellant will get his costs both of the appeal and in the Court below (*h*).

Security for costs.

A plaintiff, or a defendant having a counterclaim, who is resident out of the jurisdiction elsewhere than in Scotland or Ireland (*i*), may be required to give security for costs (*k*); but he will not be required to give security for damages that may be awarded against him (*l*).

Costs of action for limitation of liability.

The general rule as to the costs of an action for limitation of liability is that they shall be borne by the plaintiff. But if the defendant raises at the trial or at the reference (*m*) issues which are decided against him, as where he disputes the right of the plaintiff on the ground that the loss was by and with the privity of the owners (*n*), or was not caused by improper navigation (*o*), or that there is a separate liability in respect of each of two collisions (*p*), he will be compelled to pay the extra costs occasioned to the plaintiff by such issues. Nor

212; *The City of Cambridge*, 3 Asp. M. C. 307. In *The Chance* (March 8th, 1907, Shipping Gazette), appellants who succeeded in establishing the defence of inevitable accident in the Court of Appeal were given the costs of the appeal, but each side was ordered to bear their own costs in the Court below.

(*f*) *The Lauretta*, 4 P. D. 25.

(*g*) *The Milanese*, 4 Asp. M. C. 438; and see *per* Brett, L. J., in *The Hector*, 8 P. D. 218.

(*h*) *The Glannibanta*, 1 P. D. 283 (1876).

(*i*) See 31 & 32 Vict. c. 56; 36 & 37 Vict. c. 66, s. 76; *The Palace*, cited Williams & Bruce, Ad. Pr. 3rd ed. 482, note (*i*).

(*k*) *The Constantine*, 4 P. D. 156; *The Newbattle*, 10 P. D. 33; *The Julia Fisher*, 2 P. D. 115.

(*l*) *The Mary* or *Alexandra*, L. R. 1 A. & E. 335.

(*m*) *The Rijnstroom*, 8 Asp. M. C. 538.

(*n*) *African Steamship Co.* v. *Swansy*, 2 K. & J. 660; *The City of Buenos Ayres*, 1 Asp. M. C. 169; *The Empusa*, 5 P. D. 6.

(*o*) *The Warkworth*, 9 P. D. 20.

(*p*) *The Creadon*, 5 Asp. M. C. 585.

will the plaintiff in the limitation action have to pay the costs of litigation between the claimants upon the fund representing the amount of their statutory liability as to their respective rights to share in the fund (*q*).

Costs of action for amount below County Court limit.

As already said (*ante*, p. 305), costs are now in all cases in the discretion of the Court. The provisions therefore of the County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), ss. 3, 9, as to costs, are no longer in force, and a plaintiff who brings his action in the Supreme Court may receive his costs, though the amount of his damages is less than the County Court (Admiralty) limit (*r*); but in practice he will not get them unless there are special circumstances justifying his proceeding in the High Court (*s*). In *The Saltburn*, for example (*t*), such circumstances were held to exist. The size of the vessels, the nature of the collision, the length of the trial, and the judgment pronounced were such that the Court was satisfied that the plaintiff had acted reasonably in bringing the action in the High Court; similar decisions have been given according to the circumstances of the case.

Costs of appeal from County Court

Upon appeal from a County Court, 31 & 32 Vict. c. 71, s. 30, provides that an unsuccessful appellant shall pay the costs of the appeal, unless the Appellate Court otherwise directs. This enactment, if not repealed, is subject to the discretion vested in Divisional Courts by Ord. XLV. r. 1.

Costs of excessive bail.

If a plaintiff arrests the defendant ship, and requires bail for an exorbitant sum, he will be ordered to pay all the costs and expenses to which the defendants have been put in finding bail. Such an order is sometimes made in a salvage action, as where 3,000*l.* was claimed, and bail for that sum required, and only 450*l.* was awarded (*u*), but seldom in a collision

(*q*) *African Steamship Co.* v. *Swanzy*, *ubi supra*; *The City of Buenos Ayres*, *ubi supra*; *The Empusa*, *ubi supra*. As to the costs of an exorbitant claim at the reference, see *The Rijnstroom*, *supra*.

(*r*) *Garnett* v. *Bradley*, L. R. 3 App. Cas. 944; *Tennant & Co.* v. *Ellis & Co.*, 6 Q. B. D. 46; *The Camellia*, 9 P. D. 27; *Snelling* v. *Pulling*, 29 Ch. D. 85; *Parnell* v. *Mort*, *Liddell & Co.*, *ibid.* 325.

(*s*) *The Herald*, 6 Asp. M. C. 542; *The Asia*, (1891) P. 121; *The Zeta*, (1891) P. 216; (1893) App. Cas. 468; *Rockett* v. *Chippingdale*, (1891) 2 Q. B. 293, where Lord Esher remarked that no rule was intended to be laid down in *The Asia*, *supra*.

(*t*) (1892) P. 333.

(*u*) *The George Gordon*, 9 P. D. 46; and see *The Earl Grey*, 1 Sp. 180; *The Eléonore*, Br. & L. 185. As to moderation of bail, see *supra*, p. 80.

action, as the amount of the claim is usually difficult to formulate at the time of the issue of the writ.

Attendance of country solicitor.

The costs of the attendance of the country solicitor at the trial in London will be usually allowed on taxation.

Paying freight into Court.

The owner of cargo arrested for freight, upon paying into Court the amount of freight, may deduct the cost of paying it in (*v*).

Expenses of sureties.

Money paid to sureties on a bail bond in consideration of their suretyship will be allowed as costs (*w*).

Detaining seamen as witnesses.

The expense of detaining seamen witnesses until the trial is allowed as costs (*x*), when such detention is, under the circumstances, reasonably necessary.

Examiner's mistake.

Costs occasioned by a mistake of the examiner in taking evidence are costs in the cause (*y*).

Shorthand notes.

Judgment with costs does not include the cost of a transcript of shorthand notes, unless it is applied for at the trial and specially ordered (*z*).

(*v*) *The Leo*, Lush. 444. See Ord. XXIX. r. 4.
(*w*) Ord. XII. r. 21A.
(*x*) *The Karla*, Br. & L. 367.
(*y*) *The Knutsford*, (1891) P. 219.
(*z*) *The Turret Court*, 9 Asp. M. C. 162.

CHAPTER XIV.

THE REGULATIONS FOR PREVENTING COLLISIONS AT SEA.

Legislation as to the rule of the road.

MANY years before the rule of the road at sea was regulated by Act of Parliament, the practice of seamen had established rules to enable approaching ships to keep clear of each other. These rules, which are the foundation of those now in force, were well established by custom, and formed part of the general maritime law administered by the Admiralty Court (*a*). In the year 1840 a rule (*b*) as to the side on which steamships were to pass each other was promulgated by the London Trinity House, and enforced by the Admiralty Court. In 1846 the subject was first dealt with by the Legislature (*c*), and since that year the law has been altered

(*a*) A rule of the road for ships on opposite tacks existed in the latter part of the eighteenth century. Admiralty Regulations of that date direct that a ship on the larboard tack shall bear up for another on the starboard tack. In *The Resolution* (Marsd. Ad. Cas. 332), of the year 1789, the rule is said to have been framed by Lord Howe seven or eight years previously. In the Earl of Warwick's Sailing Instructions of 1645 there is an Article directing that no captain shall take the wind of an admiral. (Ad. Ct. Rec. Miscell. bundle 56.) And the Duke of York's Sailing Instructions of about 1670 contain an Article to the like effect. In neither of these codes, nor in any of the pleadings or sentences of the seventeenth and eighteenth centuries, is there any trace of the "port tack" rule.

The rule that a ship with the wind free must give way to a ship close-hauled appears to have been first recognized by the Courts in Lord Erskine's time, "in a case tried at Guildhall before Mr. Justice Buller."

In 1828, the rule is thus stated: "The ship which has the wind at large may go either to leeward or to windward; but, as a general rule, she ought to expect that the ship which is close-hauled will keep to windward, and therefore she ought to go to leeward, unless it is quite clear that she can go to windward with safety." See *Handaysyde* v. *Wilson*, 3 C. & P. 528. In *Jamieson* v. *Drinkald*, 5 L. J. C. P. O. S. 30, expert evidence as to the custom was heard, and the judge had "the assistance of two Brethren of the Trinity House, to explain the duties of the masters of both ships."

(*b*) This rule—to the effect that steamships shall pass on the starboard hand of each other—will be found 1 W. Rob. 488. As to its construction, see *The Friends*, 1 W. Rob. 484; 4 Moo. P. C. 314; *The Unity*, Swab. 101; *The Duke of Sussex*, 1 W. Rob. 274; *The Hope*, *ibid.* 154; *The Immaganda Sara Clasina*, 8 Moo. P. C. 85.

(*c*) 9 & 10 Vict. c. 100.

or added to by four successive Acts of Parliament (*d*). The only Act now in force is 57 & 58 Vict. c. 60.

Enactment of the existing regulations.

By that Act (sect. 418), power is given to his Majesty, upon the joint recommendation of the Admiralty and the Board of Trade, by Order in Council, to make regulations for preventing collisions at sea. Such regulations are to apply to British ships everywhere, and to foreign ships when within British jurisdiction.

By Order in Council of 27th November, 1896, the Regulations of 1884 (except Art. 10) were annulled as to British ships, as from the 1st July, 1897, and the regulations printed below (hereinafter called the Regulations of 1897) were substituted for them.

By Order in Council of 4th April, 1906, Art. 10 of the Regulations of 1884 and the provisions of the Orders in Council of 30th December, 1884, 24th June, 1885, and 23rd October, 1905, so far as they affected the provisions of Art. 10 of the Regulations of 1884, were repealed, and the new article in the schedule to that order is to be read and construed as part of the regulations contained in Schedule I. to the Order in Council of 27th November, 1896, and as if it had formed one of such regulations and had been numbered 9 among the articles containing the same.

By 57 & 58 Vict. c. 60, s. 424, his Majesty is empowered, with the consent of the foreign government, to direct that the regulations shall apply to the ships of foreign countries, whether within British jurisdiction or not, and that such ships shall, for the purpose of the regulations, be treated as if they were British ships. By Orders in Council of 18th May and 7th July, 1897, they have been applied to ships of the Argentine Republic, Austria-Hungary, Belgium, Brazil, Chili, China, Costa Rica, Denmark, Ecuador, Egypt, France, Germany, Greece, Guatemala, Italy, Japan, Mexico, Netherlands, Norway, Peru, Portugal, Russia, Siam, Spain, Sweden, United States; with a proviso that, in the case of China, they

(*d*) 14 & 15 Vict. c. 79; 17 & 18 Vict. c. 104; Admiralty Order of 26th Oct. 1858, see Appendix, Swabey's Rep.; 25 & 26 Vict. c. 63; 57 & 58 Vict. c. 60.

shall apply only to ships of war and merchant ships of foreign type (*e*).

At the present date (1903) ships of Cochin, Kattyawar, Khelat, Kutch, Muscat, Travancore, and Zanzibar (see Order in Council of 6th September, 1880); ships of Ecuador and Hawaii (see Order in Council of 27th November, 1880); and ships of Turkey (see Order in Council of 9th July, 1885), are subject to the Regulations of 1880 or 1884 (*f*), except, in the case of Japan, the Article as to fog-horns, and, in the case of Turkey, the Article as to bells.

Proof of regulations.

Production of the Gazette containing the Order in Council making or altering such regulations, or a copy of the regulations signed or purporting to be signed by a secretary or assistant secretary of the Board of Trade, or sealed or purporting to be sealed with the seal of the Board of Trade, is sufficient evidence of the due making and purport of such regulations (*g*).

Submarine Telegraph Act, 1885.

The Submarine Telegraph Act, 1885 (48 & 49 Vict. c. 49), embodying a Convention, to which the principal maritime nations are parties, provides for the making of special regulations for preventing collision with ships engaged in telegraph cable work. No such regulations as are referred to in the Convention have been agreed to by the signatory Powers up to the present date. The Convention has been amended, with reference to the liability for damage to cables, by 50 Vict. c. 3, and an Order in Council of 3rd May, 1888, in pursuance of a notice of 20th April, 1888 (gazetted 24th April, 1888).

Scope of authority to make Regulations conferred by Merchant Shipping Act, 1894, *s.* 418 (*i*).

In accordance with the powers conferred by the Merchant Shipping Act, 1894, the Crown may "make regulations for the prevention of collisions at sea, and may thereby regulate

(*e*) As to the application of the rule as to presumption of fault contained in sect. 419 (4) of the M. S. Act, 1894, to a foreign vessel in the case of a collision occurring beyond the territorial jurisdiction when there is no Order in Council applying Part V. of the M. S. Act, 1894, to the country to which such vessel belongs, see *The Koning Willem I.*, (1903) P. 114, and *Wm. Cory & Son, Ltd.* v. *Kopajtic*, Sc. L. Rep., XLV., 216, in both of which cases the point was taken that the rule would not apply in such circumstances. In both cases it became unnecessary to decide the point. In Australia it has been held that the rule does not apply in such a case: *The Coogee*, Victorian L. R., XXIX., p. 874; see also *The Astrakhan*, Ship Gaz. Nov. 4, 1909.

(*f*) See 57 & 58 Vict. c. 60, s. 745.

(*g*) 57 & 58 Vict. c. 60, ss. 695, 719, 738.

the lights to be carried and exhibited, the fog signals to be carried and used, and the steering and sailing rules to be observed by ships . . ." These words have been the object of close scrutiny. The power conferred is to "make regulations for the prevention of collisions at sea" (*h*), and the Order in Council of 27th November, 1896, describes the regulations contained in the schedule attached thereto as being such regulations. The preliminary paragraph of the regulations, on the other hand, lays down that the "rules shall be followed upon the high seas and in all waters connected therewith, navigable by sea-going vessels." In view of this discrepancy it was contended in respect of a collision, which occurred in the Para estuary of the River Amazon (*i*), that the regulations were not applicable to these waters, and that, in so far as they purported to control the navigation of vessels in such waters, they were *ultra vires*. The Court of Appeal, having regard to the many cases (*k*) in which the regulations have been treated as applicable to rivers and narrow waters, refused to interfere with what had become the established practice, and it may now be regarded as settled law, so far as that Court is concerned, that the regulations are applicable to all waters within the preliminary paragraph, and, in view of the expressions of the learned Lords Justices, it may be regarded as almost equally certain that a breach of the regulations in such waters carries with it the statutory penalty.

The regulations can, however, only apply to waters which are within the preliminary paragraph of the regulations, and accordingly do not apply to an artificial channel connected with the sea by means of locks, such as the Manchester Ship Canal (*l*).

(*h*) The Act (s. 421), and also Art. 30 (*infra*, p. 501), preserve the force of rules made under local Acts: and the same section enables the King to make rules for waters where there is no other authority to make them. Under this power rules have been made for Windermere Lake; Ord. in Council, 19th Nov. 1902.

(*i*) *The Anselm*, (1907) P. 151.

(*k*) *The Concordia*, L. R. 1 A. & E. 93; *The Velocity*, L. R. 3 P. C 44; *The Cologne* and *The Ranger*, *ibid.* 4 P. C. 519; *The Owen Wallis*, L. R. 4 A & E. 175; *The Khedive*, 5 App. Cas. 876 (Penang channel); and see *The Fyenoord*, Swab 371; *The Germania*, P. C. 17th June, 1875, cited 1 Maude & Pollock on Shipping, 606, note (*i*); *The Leverington*, 11 P D. 117. In America the Act of Congress embodying the Regulations of 1863 is expressed to be for preventing collisions "on water" By the Canadian statute 31 Vict. c. 58, the regulations are applicable over all the inland and other navigable waters of the Dominion.

(*l*) *The Hare*, (1904) P. 331. In America, power is given by Act of

It has also been unsuccessfully contended that no power is given by the Merchant Shipping Act to make regulations in regard to sound signals other than fog signals (*m*).

In regard to the regulations, it has been said that their object is not only to prevent collisions but to minimise their effects (*n*). It is not clear that his Majesty has power to make regulations for any object but to prevent collisions. Any regulation, however, directed to mitigate the effect of a collision would probably be held to tend to the prevention of collision, and to be well made under the powers given by the Act above mentioned.

On the sea, everywhere, except where inconsistent (*o*) local rules are in force, the collision regulations are directly applicable (*p*). Their application in winding rivers and in waters where local rules are in force is considered below under Arts. 19, 25 and 29.

By Scottish Courts the regulations have been held to apply in the Clyde. Notwithstanding the existence of local rules of navigation applicable to the Clyde, a steamship was held in fault for disobedience to Arts. 13 and 18 of the Regulations of 1863 (*q*). From this decision it appears that in Scotland the regulations are held to be applicable in rivers, as well as at sea, and that where local rules are in force they are to be construed and applied in conjunction with the general regulations. In *The Carlotta* (*r*) Gorell Barnes, J., was disposed to hold that they so apply in the Thames.

Congress of 19th Feb. 1895, c. 102, to a department of the Government to fix the line dividing waters within which the sea regulations are applicable from inland and coast waters within which local rules are in force. The "London Gazette" of 30th March, 1897, contains Notices to Mariners (No. 349 of 1895 and No. 171 of 1897) of the fixing of such lines in certain American waters.

(*m*) *The Aristocrat*, (1908) P. 9.

(*n*) See *per* Lord Watson in *The Voorwaarts* and *The Khedive*, 5 App. Cas. 876, 903, 904; and see *Maclaren* v. *Compagnie, &c.*, 9 App. Cas. 640, 651, 652.

(*o*) 43 Vict. c. 29 (Canada), s. 4, makes void local rules which are inconsistent with the regulations.

(*p*) See *The Saxonia*, Lush. 410, as to the application of a former Act to foreign ships in the Solent.

(*q*) *Little* v. *Burns*, *The Owl* and *The Ariadne*, 9 Ct. of Sess. Cas. 4th ser. 118, where, however, the ship was in fault upon the facts. See also *The Germania*, cited Maude & Pollock on Shipping, 4th ed. 606, note (*i*), where the collision was in the Humber, near the Flat Holm Sand, and the regulations as to lights were held to apply. In *The Pekin*, (1897) App. Cas. 533, they were applied in a foreign river. In *The Nerano* and *The Dromedary*, 22 Ct. of Sess. Cas. 4th ser. 237, it was assumed that the sea regulations applied in the Clyde. But in none of these cases was the point really discussed.

(*r*) (1899) P. 223.

To what ships they apply.

The regulations apply to all seagoing ships and craft, whether large or small, and whether propelled by oars, sails, or steam (*s*). A large and unwieldy steamship will not be heard to allege, as an excuse for not obeying them, that the craft with which she was in collision was a small and handy boat that could easily have got out of the way; or that she (the steamship) was a trader carrying mails, and that the plaintiff ship was a pleasure craft (*t*). Whether they apply to craft intended never to go to sea, as hulks, harbour lighters, and such craft, seems doubtful (*u*). As to their application to his Majesty's ships, ships of foreign governments, and ships sailing under convoy, see Art. 13, *infra*, p. 365.

The regulations apply to British ships everywhere (*x*). To foreign ships within British jurisdiction, by 57 & 58 Vict. c. 6, s. 418, they apply directly, as forming part of the municipal law of this country. They are also applicable to foreign ships out of British jurisdiction, and, in the case of a collision on the high seas, or in foreign waters, are applied to such ships by British Courts by virtue of 57 & 58 Vict. c. 60, s. 424.

Their international character.

The regulations are part of the municipal law of this country, of some foreign countries (*y*), and of several British Colonies. In the United States it has been held that, having been adopted by all maritime nations, the regulations are of universal application, and form part of the international or general maritime law of the world (*z*).

Uniform construction of the regulations desirable.

The international character of the regulations, and the safety of navigation, require that they should be understood by the seamen of different nations in the same sense. It is

(*s*) *Ex parte Ferguson and Hutchinson*, L. R. 6 Q. B. 280; and see 25 & 26 Vict. c. 63, ss. 25, 27 and 28, where the regulations, including those for fishing boats, are spoken of as regulations for *ships*. As to electric ships, see *infra*, p. 333.

(*t*) *The Medusa*, 46 Fed. Rep. 303.

(*u*) *The C. S. Butler*, L. R. 1 A. & E. 238. A hulk was held not to be a ship within 17 & 18 Vict. c. 104, s 55; *European, &c. Mail Co.* v. *P. & O. Steam Navigation Co.*, 14 L. T. 704.

(*x*) Subject, it seems, to local rules, and in colonial and foreign waters to colonial and municipal laws. In America it has been doubted whether two American ships, whilst passing through Canadian waters on their voyages to and from American ports, are required to comply with the sea regulations or Canadian local rules: *The New York*, 82 Fed. Rep. 819.

(*y*) Amongst others, the United States, where they apply to all public and private vessels: Ch. 802 of the laws of 1890; and Germany.

(*z*) *The Scotia* and *The Berkshire*, 14 Wall. 170; *The Belgenland*, 7 Davis, 355.

therefore of importance that the construction placed upon them by the Courts of different countries should be uniform. This has been distinctly recognized in America. The following observations occur in a judgment of a Circuit Court of the United States: "The paramount importance of having international rules, which are intended to become part of the law of nations, understood alike by all maritime powers, is manifest; and the adoption of any reasonable construction of them by the maritime Powers named affords sufficient ground for the adoption of a similar construction of our statute by the Courts of this country" (*a*).

In the Courts of this country the ships of a foreign country to which the regulations have been applied by Order in Council, will, it is conceived, be bound by the English version of the regulations. The foreign versions of the Regulations of 1863 were not, in all cases, exactly equivalent to the English version. An important article of the Portuguese regulations was open to a construction which was entirely different to that borne by the English version (*b*).

Rule for construing them.

The following observations of Jessel, M. R., upon the construction of the Thames Rules appear to supply the rule for construing all statutory regulations for preventing collisions (*c*): "It must be remembered what these rules are. They are issued for the guidance of masters of vessels; and, therefore, the proper mode of construing them is to read them literally. . . . Certainly rules issued as these are should be construed literally, if they can be construed at all." In *The Dunelm* (*d*), Brett, M. R., with reference to Art. 9 of the Regulations of 1863, said: "My view of an Act of Parliament—and this article is equivalent to an Act of Parliament—which is made applicable to a large trade or business is, that it should be construed, if possible, not according to the strictest and nicest interpretation of language, but according to a reasonable and business interpretation of it with regard

(*a*) *Per* Benedict, J., in *The Sylvester Hale*, 6 Bened. 523; and a similar opinion was expressed by the Court in *The Free State*, Brown, Ad. 251, 261.

(*b*) See correspondence relating to the collision between *The Insulano* and *The City of Mecca*, Parl. Pap. C. 3443, Sess. 1882.

(*c*) *The Libra*, 6 P. D. 139, 142. See also *per* Brett, M. R., in *The Margaret*, 9 P. D. 47.

(*d*) 9 P. D. 164.

to the trade or business with which it is dealing." And in another case the same learned judge said: "I take it that the basis of the regulations for preventing collisions at sea is, that they are instructions to those in charge of ships as to their conduct; and the Legislature has not thought it enough to say, 'We will give you rules which shall prevent a collision'; they have gone further and said that, for the safety of navigation, we will give you rules which shall prevent risk of collision" (*e*).

They furnish the test of negligence.

Where no special circumstances exist to make the regulations inapplicable, they furnish the paramount rule for the decision of the question as to which ship is in fault in every case of collision. Public policy, as well as the best interest of all concerned, requires that they should be enforced in all cases to which they apply (*f*). Departure from them is justifiable only in one event; namely, where it is necessary in order to avoid immediate danger (*g*). It is not justifiable on the ground that, under the circumstances of the case, it would be better seamanship not to comply with them (*h*); or on the ground that by departing from them the violence of the blow would be lessened (*h*); or because both ships (tugs) are racing for a schooner to get the towage job (*i*). But though the regulations are the paramount rules of navigation, yet, where the usage of the place and the business and courses of particular vessels are obvious and well known, no seaman has a right to neglect the knowledge he has of the probable movements of other ships with reference to such usage. Thus, in New York harbour it is held that a vessel must act according to her knowledge of the course which a ferry-boat usually takes in making her slip (*k*). So where warps are to be expected and are commonly used in transporting vessels and shifting berths, a look-out for them is no more than

(*e*) *Per* Brett, M. R., *The Beryl*, 9 P. D. 137, 138. And see *infra*, p. 323, as to the circumstances under which the regulations are applicable.

(*f*) *New York and Liverpool U. S. Mail Steamship Co.* v. *Rumball*, 21 How. 372, 383. And see *The Byfoged Christensen*, 4 App. Cas. 669, *infra*, p. 461; *The Voorwaarts* and *The Khedive*, 5 App. Cas. 876.

(*g*) See below, Art. 27, as to the circumstances under which departure from the regulations is allowed.

(*h*) *The Voorwaarts* and *The Khedive*, 5 App. Cas. 876, 895.

(*i*) *Latham* v. *Hamilton and Merriman Co.*, 63 Fed. Rep. 856.

(*k*) *The John S. Darcy*, 29 Fed. Rep. 611.

reasonable (*l*). Although the regulations in ordinary cases afford a test of negligence, and in some case proof of departure from them is equivalent to proof of negligence, they are not to be applied mechanically, to determine whether a ship is in fault for a collision. Even where a position of risk is established, and a particular Article is proved to have been applicable, a vessel will not be held in fault for non-compliance with it, if the time during which it was applicable was so short, or the circumstances so startling, that a seaman of ordinary skill, care, and nerve might reasonably be excused for not having appreciated the situation in time to enable him to obey the law (*m*).

Where the regulations are clearly inapplicable, as where the ship cannot take the step required without going ashore, or endangering herself or other vessels, the question which ship is in fault is tried, without regard to the regulations, by the ordinary rules of seamanship. Provided they are not inconsistent with the regulations, the rules or practice of seamen, although they have not the force of law, are equally binding with the regulations, and upon British and foreign ships alike (*n*). The regulations are framed, primarily, for the purpose of preventing collision between two ships navigating in the ordinary way upon definite courses. There are many cases to which they are inapplicable, and in such cases the ships must keep clear of each other by the exercise of ordinary care and seamanship. Thus, it has been held in America that the "crossing" rule does not apply to two steamships, of which one was backing stern foremost out of her slip in New York harbour and the other was on her course down the river (*o*). The Court intimated that the case was one of "special circumstances," and provided for by Art. 29. There is a similar decision as to the rule requiring a ship to keep her course and speed, where the ship in question was a New York ferry-boat about to "make her slip" (*p*).

Both ships must obey the regulations.

The regulations define the steps to be taken by each vessel,

(*l*) *The Fulda*, 31 Fed. Rep. 351.

(*m*) *The Voorwaarts* and *The Khedive*, 5 App. Cas. 876, 902; *The Theodore H. Rand*, 12 App. Cas. 247.

(*n*) As to the mode of proving matters of nautical skill and seamanship, see *supra*, p. 292.

(*o*) *The Servia*, 42 Davis, 144.

(*p*) *Walsh* v. *Brooklyn and New York Ferry Co.*, 68 Fed. Rep. 507.

and they are not complied with unless each vessel takes the steps required of her. The neglect of one to comply with the regulations is no excuse to the other, if she fails to do what is required of her, although a collision would have been avoided if either had complied with the law (*q*).

Circumstances under which regulations are applicable; risk of collision.

The question as to the time and circumstances at and under which the regulations become applicable was discussed by Brett, M. R., in *The Beryl* (*r*). The Master of the Rolls, and the other members of the Court of Appeal (Bowen and Fry, L. JJ.), held that the regulations were intended not only to prevent collision, but to prevent risk of collision; and that it is a rule of interpretation of the regulations that "they are all applicable at a time when the risk of collision can be avoided, not that they are applicable when the risk of collision is already fixed and determined." The Court laid stress upon the words "so as to involve risk of collision," which occur in several of the Articles (*s*), and held that they do not refer to an existing risk of collision, but point to a time before risk of collision has arisen, and where it is, or ought to be, apparent that there will be risk, if nothing is done to prevent it. "Another rule of interpretation of these regulations is (the object of them being to avoid risk of collision), that they are all applicable at a time when the risk of collision can be avoided—not that they are applicable when the risk of collision is already fixed and determined. We have always said that the right moment of time to be considered is that which exists at the moment before the risk of collision is constituted" (*t*). So, in *The Stanmore* (*u*), Brett, M. R., held the regulations to apply where there is "a probability of risk."

(*q*) *The Clara*, 49 Fed. Rep. 765; *The America*, 2 Otto, 432; *The Araxes* and *The Black Prince*, 15 Moo. P. C. 122; *Little* v. *Burns*, 9 Ct. of Sess. Cas. 4th ser. 118.

(*r*) 9 P. D. 137; and in *The Dordogne*, 10 P. D. 6. See also *The Ebor*, 11 P. D. 24, 29; *The Memnon*, 6 Asp. M. C. 317.

(*s*) In Art. 20 the words "such directions" are substituted for "so."

(*t*) *Per* Brett, M. R., *The Beryl*, 9 P. D. 137, 140. It is submitted that this view of the application of the steering and sailing rules—that the steps required by them are to be taken, not only where there is risk of collision, but where there is no risk, and only a probable risk—will raise serious difficulties, both for seamen and the law courts. Previously to *The Beryl*, the view of the English Courts seems to have been that the regulations (the steering and sailing rules) applied only where there was risk of collision; and it is submitted that this is the more natural and more beneficial

(*u*) 10 P. D. 131.

What constitutes "risk of collision."

What constitutes risk of collision it is difficult to define; "It was utterly impossible for the Legislature to have determined, or described, what should constitute risk of a collision; for that must always be decided, according to the circumstances of each case, by men of nautical experience" (*x*). It has been described as a "chance," a "probability," a "strong," or a "reasonable" (*y*) probability of collision; and distinguished from a "possibility" of collision (*z*). In a case under 14 & 15 Vict. c. 79, Dr. Lushington said: "This chance of collision is not to be scanned by a point or two. We have held over and over again that if there be a reasonable chance of collision it is quite sufficient. . . . We have never got to this, and I hope never shall, that it (the rule) applies where two vessels are sailing properly, and there is no chance of a collision" (*a*). In another case the same learned judge said: "The whole evidence shows that it was the duty of *The Colonia*, with the wind free, to have made certain of avoiding *The Susan*. She did not do so, but kept her course till she was at so short a distance of a cable and a-half's length, in the hope that the vessels might pass each other. Now it never can be allowed to a vessel to enter into nice calculations of this kind, which must be attended with some risk, whilst it has the power to adopt, long before the collision, measures which would render it impossible" (*b*).

Indications of risk.

Approaching ship not altering her bearing.

In practice, one of the most usual indications of risk of collision is that the approaching ship remains upon the same bearing from the observing ship for an appreciable length of time. If the bearing alters quickly when the ships are a consider-

construction. The danger is that two minds will seldom agree as to there being a probability of risk. The actual existence of risk is a fact about which there can be less doubt. Cp. *The General U. S. Grant*, 6 Bened. 465. Similar words occur in 17 & 18 Vict. c. 104, s. 296, and were commented upon by Dr. Lushington in *The Inflexible*, Swab. 32. In an American case, *The Milwaukee*, Brown, Ad. 313, the view of Brett, M. R., in *The Beryl*, seems to have been taken, that the regulations apply before there is actual risk.

(*x*) *Per* Dr. Lushington in *The Mangerton*, Swab. 120.

(*y*) *The Cleopatra*, *ibid.* 135; *The Ericsson*, *ibid.* 38; *The Duke of Sussex*, 1 W. Rob. 274; *The Dumfries*, Swab. 63, 65; with reference to the same expression in 17 & 18 Vict. c. 104, s. 296.

(*z*) *The Ericsson*, Swab. 38. But see *The Voorwaarts* and *The Khedive*, *per* Lord Hatherley, 5 App. Cas. 876, 905; and *per* Pollock, C. B., *General Steam Navigation Co.* v. *Mann*, 14 C. B. 127, 132.

(*a*) *The Sylph*, 2 Sp. 75, 82.

(*b*) *The Colonia*, 3 Not. of Cas. 13, note.

able distance apart, there is no risk. The existing regulations (Art. 17) call attention to this fact (*c*).

Another indication of risk of collision at night is the alteration of the apparent horizontal distance between an approaching steamship's masthead and side light. This alteration usually indicates a change in direction of the approaching ship's head and course, but it is of little value in estimating risk of collision, unless the relative positions of the masthead and side lights are known. Steamships' side lights are seldom carried exactly abreast of her masthead light, and are often a considerable distance forward or aft of it. In most vessels they are carried abaft the masthead light; but in some of the newer vessels, and in ocean liners, they are carried in miniature lighthouses erected on the deck forward of the masthead light. When the relative position of the lights is known, the alteration in the ship's course may be known by the following rule:— Opening or closing of masthead and side light.

Where the side light is abaft the masthead light, the apparent distance between those lights increases as the ship's head turns away from the observer; they close as the ship's head is turning towards him (*d*). Where the side light is forward of the masthead light, the masthead and side light broaden as the ship's head is turning towards an observer forward of a line joining the masthead and sidelights; whilst to an observer abaft that line, the lights are at the same time closing (*e*).

In estimating risk of collision, it seems that the possibility of the other ship being unable to comply with the regulations, or of her negligently departing from them, is not, under ordinary circumstances, to be taken into consideration (*f*).

Risk of collision, such as will bring into operation Art. 23 (requiring a steamship under certain circumstances to slacken

(*c*) See *The City of Berlin*, (1908) P. 110.

(*d*) Except in the case of an observer abaft the line at right angles to a line joining the masthead and side lights (supposing them to be in the same horizontal plane), a case which for the present purpose may be neglected. *The Stanmore*, 10 P. D. 134, is an instance of the rule stated in the text.

(*e*) Except in the case mentioned in the last note. In *The Ilos*, 8 Asp. M. C. 92, it was held that the closing of the lights was not such an indication of risk as to make it necessary to stop and reverse.

(*f*) *The Jessmond* and *The Earl of Elgin*, L. R. 4 P. C. 1; *Watson* v. *Carrie*, (1894) A. C. 116; *The John King*, 49 Fed. Rep. 469.

her speed or to stop or reverse), appears to be of a more imminent character than that which brings other articles into operation. The question will be considered below in connection with that article.

American cases as to the meaning of "risk of collision."

The difficulty of defining the moment at which these regulations become applicable has been recognized by the American Courts (*g*). The following passage from a judgment of the Supreme Court of the United States expresses the general rule as to the time at which and during which they become and remain applicable :—"Rules of navigation, such as have been mentioned (as to the duties of two vessels approaching each other), are obligatory upon such vessels when approaching each other from the time the necessity for precaution begins ; and they continue to be applicable as the vessels advance so long as the means and opportunity to avoid the danger remain. They do not apply to a vessel required to keep her course after the approach is so near that the collision is inevitable, and are equally inapplicable to vessels of every description while they are yet so distant from each other that measures of precaution have not become necessary to avoid a collision" (*h*).

It would therefore seem that the regulations do not apply, or at least that departure from them is justifiable, where the collision is in fact inevitable, though there appears to be a chance of escape by departing from the regulations (*i*).

In *The Milwaukee* (*k*), it was said by the same Court that where vessels are meeting or passing in a crooked and narrow channel there is always risk of collision.

In *The Libra* (*l*), decided under the Thames Rules, in which the same phrase, "risk of collision," occurs, Brett, L. J., considered that, when the vessels were each rounding a point upon concentric circles of different diameters, and so that they would clear each other without further alteration of the helms than the course of the river required, there was no risk of collision.

(*g*) *The Nicholls*, 7 Wall. 656.

(*h*) *The Wenona*, 19 Wall. 41, 52; *Lake Erie Transp. Co.* v. *Gilchrist Transp. Co.*, 142 Fed. Rep. 89. Similar expressions occur in the judgments in *The Nicholls*, 7 Wall. 656; *The Johnson*, 9 Wall. 146; and *The Dexter*, 23 Wall. 69.

(*i*) See *The Benares*, 9 P. D. 16.

(*k*) Brown, Ad. 313; *The Newport News*, 83 Fed. Rep. 522.

(*l*) 6 P. D. 139, *infra*, p. 541.

The distance, rate of sailing, and course of another vessel, and the direction of the wind, are never known exactly, and in practice there is often difficulty in determining the moment at which, and the manner in which, the regulations are to be applied (*m*). In judging of the course and probable movements of a strange vessel, it must be assumed, under ordinary circumstances, that she can, and will, comply with the regulations (*n*). Uncertainty as to facts causing risk.

Where there is no risk of collision, a vessel that improperly alters her helm so as to bring about a collision will be held to be in fault (*o*). Alteration of course so as to cause risk.

If a vessel is disabled, or slow in answering her helm, it is her duty to be prompt in taking the measures required by the regulations (*p*).

If a ship sees another in a position that may involve risk of collision, but is unable to make out what course the other is on, she should keep her course, and not alter her helm, or take any decisive step until she has ascertained the other ship's course (*q*). "The mere discovery of a strange light does not necessarily immediately bind a person in charge of a vessel to follow any particular rule; but as soon as he has opportunity of ascertaining, by reasonable care and skill, what the strange vessel is, and what course she is pursuing, then the rule which is applicable to the circumstances at once becomes binding on him" (*r*). Regulations not applicable until facts known.

An alteration of the helm in a fog, when the other ship cannot be seen and only her whistle is heard, is not necessarily Alteration of helm in fog.

(*m*) In the Courts, owing to the form of the pleadings, the question as to the moment when the regulations become applicable does not often arise.

(*n*) *The Jesmond* and *The Earl of Elgin*, L. R. 4 P. C. 1. See also *The Free State*, 1 Otto, 200, for a decision of the Supreme Court of the United States to the same effect. The view seems to have been taken in some American cases that the steps required by the regulations should be taken, and the helm altered, before any risk is incurred, if the courses are such that, if continued, there would be risk. See *The Milwaukee*, Brown, Ad. 313, 331. In the same case, it was held that the chance of the other vessel disobeying the regulations must be taken into account. *Sed qu.*

(*o*) *The Velocity*, L. R. 3 P. C. 44; *The Esk* and *The Nord*, L. R. 3 P. C. 436; *The Inflexible*, Swab. 32; *The Seaton*, 9 P. D. 1; *The City of Macon*, 92 Fed. Rep. 207.

(*p*) *The Test*, 5 Not. of Cas. 276.

(*q*) *The Rona* and *The Ava*, 2 Asp. M. C. 182; *The James Watt*, 2 W. Rob. 270; *The Moderation*, 9 L. T. 586; 1 Moo. P. C. 528; *The Bougainville* and *The James C. Stevenson*, L. R. 5 P. C. 316, 321.

(*r*) *Per* Dr. Lushington, *The Great Eastern*, 11 L. T. 5.

negligence, though it is made merely upon a guess as to the distance, course, speed, and direction of the other ship, and may, where the position of the other vessel is ascertained beyond reasonable doubt, be required under the rules (*s*). As a general rule, where a reasonable doubt exists as to the position of the other ship, a ship should not alter her course; but each case must depend upon its own circumstances, and it cannot be laid down that every alteration of course in ignorance of the position and course of the other ship is in itself a fault (*t*).

Alteration for greater safety, where no risk.

An alteration of the helm made for greater safety when there is no risk of collision will not be held to be a fault. A sailing ship (in 1856) seeing a green light from two to four points on her starboard bow, and distant about a mile and a-half, put her helm to starboard, and subsequently came into collision with the other ship. It was held that she was not in fault for starboarding (*u*).

Cases in which there was "risk of collision."

It has been held that the vessels were approaching "so as to involve risk of collision" in the following cases:—Two steamships meeting on nearly opposite courses at a joint speed of eighteen or nineteen knots, and distant a mile and a-half (*x*); a steamship and a sailing-ship, distant two or three miles, and meeting at a joint speed of seventeen knots, the steamship not being able to make out the course of the sailing-ship, but knowing that it was probably nearly opposite to her own (*y*); a steamship two points on the quarter of another and overtaking her, distant a mile or less than a mile (*z*); a steamship overtaking another upon a converging course, and distant three miles (*a*). Where two sailing vessels were approaching each other on courses only half a point from being directly opposite, at a joint speed of twelve knots, and distant from each other two or three miles, it was held by the

(*s*) See *The Merthyr*, 8 Asp. M. C. 475, and cases quoted under Art. 16.

(*t*) *The Vindomora*, 14 P. 172; affd. in H. L., (1891) A. C. 1. *The Resolution*, 6 Asp. M. C. 363, is not to the contrary. See *per* Lord Herschell, (1891) App. Cas. 4. So in America: *The Umbria*, 166 U. S. Rep. 404.

(*u*) *The Sylph*, Swab. 233; see also *The Franconia*, 2 P. D. 8, 13. But see *The Corsica*, 9 Wall. 630.

(*x*) *The Jesmond* and *The Earl of Elgin*, L. R. 4 P. C. 1.

(*y*) *The Bougainville* and *The James C. Stevenson*, L. R. 5 P. C. 316.

(*z*) *The Franconia*, 2 P. D. 8.

(*a*) *The Seaton*, 9 P. D. 1.

Supreme Court of the United States that there was risk of collision (*b*).

In *The Banshee* (*c*), a steamship was going seventeen knots in Dublin Bay, and overtaking another going ten or twelve. The latter was 800 yards ahead, and the overtaking vessel was going in such a direction as to pass within a ship's length of her. It was held that there was no risk of collision, and that the leading ship was not in fault for not keeping her course. *Sed qu.*

When two ships are approaching each other with risk of collision, the rule of the road applies once and for all to take them clear. A ship is never required by the regulations, after having sighted another, to alter her course first to starboard and then to port; or, first to keep her course, and then to keep out of the way; or *vice versâ*. In the case, for example, of steamships meeting end on, or nearly so, each is required to alter her course to starboard. If, while under the port-helm, the relative positions and heading of the ships are changed, so that from meeting ships they become crossing ships, the "meeting" rule does not cease to operate, or give place to the "crossing" rule. The manœuvre of porting must be persisted in until the risk of collision is determined. If porting will not take the ships clear, Art. 23 or Art. 27 may apply and the engines may be stopped, or any other step taken which is necessary to avert collision; but the ships cannot afterwards, and whilst the risk continues, become crossing ships. If once a ship is within the "meeting" rule or any other rule requiring her to take or keep a definite course, or requiring her to keep out of the way, she cannot, whilst the risk continues, come within the operation of the "crossing" rule, or any other rule requiring her to adopt a different manœuvre. The object of the rule of the road and of the regulations would be entirely frustrated if it were possible for a ship to be thrown from one rule to another; if, whilst in the act of obeying one Article, she was suddenly to come within the operation of another Article, requiring her, perhaps, to take an exactly opposite course, and so making

When the "meeting" or "crossing" rule applies it continues to be applicable until the risk is determined.

(*b*) *The Nicholls*, 7 Wall. 656. And see *The Cayuga*, 14 Wall. 270.

(*c*) 6 Asp. M. C. 221. The facts as stated in the text are taken from the judgment of Lord Esher.

the previous manœuvre of no effect. Thus, *The Molière*, overtaking *The Baines Hawkins*, brought the side lights of the latter into view as she drew up abreast. It was held that this did not bring into operation the "crossing" rule, and that *The Molière* was an overtaking ship until she passed clear of *The Hawkins* (*d*). So a crossing ship cannot, by getting ahead or across the bows of the other, make the latter an overtaking ship (*e*).

The regulations must be complied with promptly and effectually.

The precautions required by the law to be taken where there is risk of collision must be taken in time to determine that risk (*f*). An alteration of the helm or other step taken in pursuance of the regulations, is no defence, unless it is shown that such precaution was taken at the proper time. To be effectual, precautions must be seasonable. If taken at an improper time they are not a compliance with the regulations, and are no defence. "If you adopt a measure at an improper time, it does not take away the culpability of not having done it before and prevented the accident" (*g*).

Close shaving.

A vessel is not justified in delaying to take precautions until the last moment; or in trusting to being able to "shave" clear of the other (*h*). If by doing so she frightens the other into taking a wrong step, and a collision occurs, she will be responsible for the entire loss (*i*). By a prompt compliance with the regulations, where a vessel is required to alter her course to avoid another, she apprises the latter of her ability and intention to comply with the regulations; whereas by delaying to take the required step, she may lead the other vessel to suppose that she is unable to comply with them, and cause her to take a step which may make a collision inevitable. Where a ship, in order to show that she is free from blame, is required to prove that she altered her course at the proper time, it is not enough for her to show that her helm was

(*d*) *The Molière*, (1893) P. 217.

(*e*) *The State of Texas*, 20 Fed. Rep. 254.

(*f*) *The Trident*, 1 Sp. 217, 222; *The Westhall*, 153 Fed. Rep. 1010.

(*g*) *Per* Dr. Lushington in *The Stadacona*, 5 Not. of Cas. 371, 374; *The Fenham*, L. R. 3 P. C. 212 (as to lights). The view taken by the Courts of the United States is the same: *The Johnson*, 9 Wall. 146; *The Vanderbilt*, 6 Wall. 225; *The Syracuse*, 12 Wall. 167; *The Sunnyside*, 1 Otto, 208; *The America*, 2 Otto, 432.

(*h*) *The John Brotherick*, 8 Jur. 276; *The Benefactor*, 14 Blatchf. 254.

(*i*) See above, p. 3.

altered at that time; she must prove that she answered her helm (*k*) in time.

Where, by the action of the helm in accordance with the regulations, risk of collision has apparently been determined, but in fact it continues, and the risk again becomes apparent, the regulations are not complied with unless the steps required by them to be taken are taken and persisted in up to the time of collision or until the ships are clear. Thus where, by porting, a steamship, A., shut in the green of B., a steamship which had been approaching her with all her lights showing, and shortly afterwards, owing to the perverse starboarding of B., her green again became visible to A., and thereupon A. again ported and again shut in B.'s green, but B. continued to starboard, and again showed her green to A.; though A. ported a third time, it was held that she was in fault, because she did not stop and reverse when B. (*l*) showed her green for the third time.

Regulations apply until risk finally determined, or ships clear.

A vessel sailing upon a voyage that may not be terminated until a regulation as to lights or fog-signals comes into force, and which is enacted, but not in force, when she sails, must, if possible, be provided with fog-signals, lights and whatever is necessary to enable her to comply with the regulation when it comes into force (*m*).

Ship to be provided with required appliances.

No alleged practice of seamen of avoiding other ships by taking measures other than, and inconsistent with, those required by the regulations is recognized by the law. A defendant cannot be heard to allege such a practice as an excuse for a violation of the regulations (*n*). Where a custom was set up that merchant ships should keep out of the way of Queen's ships coming out of Devonport harbour by the deep-water channel, it was held that it was not binding in law (*o*). On the same principle, under former Acts requiring ships to navigate on the starboard side of a river, it was held that it was no excuse for a vessel on her wrong side that she was

Practice or custom inconsistent with the regulations cannot be good.

(*k*) *The La Plata*, Swab. 220.
(*l*) *The Arratoon Apcar*, 15 App. Cas. 37.
(*m*) *The Love Bird*, 6 P. D. 80.
(*n*) *The Sylph*, 2 Sp. 75; *The Unity*, Swab. 101; *The Hand of Providence*, *ibid.* 107; *The Annie* and *The Black Prince*, 15 Moo. P. C. 122; *The Velocity*, L. R. 3 P. C. 44, 50; *Occidental, &c. Co.* v. *Smith*, 74 Fed. Rep. 261.
(*o*) *H.M.S. Topaze*, 10 L. T. 659.

keeping out of the strength of the tide (*p*). So a custom to treat sailing-ships in the trades as close-hauled, when in fact they are a point or two free, was disregarded by the Courts in applying the steering and sailing rules (*q*).

The penalties attached to non-observance of the regulations have been considered in former chapters (*r*).

THE REGULATIONS.

The following are the regulations made by the Order in Council of 27th November, 1896, and subsequent dates, under the Merchant Shipping Act, 1894, s. 418. At the present date there are a few foreign countries to the ships of which they have not yet been applied (*s*); and to such ships the regulations of 1880, or of 1884, are still applicable. The existing regulations are substantially the same as those of 1884. Many of the cases cited below arose under the earlier regulations, but are, it is submitted, binding authorities upon the points for which they are cited as to the construction and effect of the existing regulations (*t*). Those of 1880 will be found L. R. 4 P. D. p. 241; and those of 1884, L. R. 9 P. D. p. 247; and the existing regulations (of 1897) in L. R. (1896) P. p. 307.

Regulations for Preventing Collisions at Sea.

Preliminary.

These rules shall be followed by all vessels upon the high seas, and in all waters connected therewith, navigable by sea-going vessels.

(*p*) Below, p. 446.
(*q*) *The Earl Wemyss*, 6 Asp. M. C. 407.
(*r*) See pp. 39 *seq.*, 279 *seq.*, above.
(*s*) See above, p. 315.
(*t*) Cf. *per* James, L. J., L. R. 5 Ch. 706: "Where once certain words in an Act of Parliament have received a judicial construction in one of the Superior Courts, and the Legislature has repeated them, without any alteration, in a subsequent statute, I conceive that the Legislature must be taken to have used them according to the meaning which a Court of competent jurisdiction has given them."

In the following rules every steam vessel which is under sail and not under steam is to be considered a sailing vessel, and every vessel under steam, whether under sail or not, is to be considered a steam vessel.

The words "steam vessel" shall include any vessel propelled by machinery.

A vessel is "under way" within the meaning of these rules, when she is not at anchor, or made fast to the shore or aground.

This Article corresponds with Art. 1 of the Regulations of 1884. The paragraphs defining the local application of the regulations, providing for electric and other modes of propelling ships and defining the term "under way," are new.

The words applying the regulations in all waters connected with the high seas navigable by sea-going vessels must be read in connection with Art. 30, which preserves the effect of local rules. The express application of the sea regulations to all waters connected with the sea is new, and has given rise to difficulty (see p. 316, *supra*).

The regulations contain no definition of a "sailing vessel"; nor would any definition have been necessary had not the new Art. 26 distinguished a "sailing vessel" from "sailing vessels . . . fishing with . . . trawls." This distinction creates a cross classification, and may lead to difficulty in construing Arts. 17, 20, and 24.

Under former regulations it was held that a steam tug with her engines idle and her fires banked was "under steam" and required to keep out of the way of a sailing-ship (*y*); and it would seem that the case would be the same if she were hove-to under canvas.

A steamship in tow, whether under steam or not, is required by Art. 5 to carry her side lights; and this appears to have been the practice apart from the regulations (*z*).

(*y*) *The Jennie S. Barker* and *The Spindrift*, L. R. 4 A. & E. 456. The report of this case in Mitch. Mar. Reg. states that the tug had no canvas set. *The Sunnyside*, 1 Otto, 208, is a similar decision of the U. S. Supreme Court. As to a sailing-sloop with an auxiliary naphtha-engine, see *The Captain Weber*, 89 Fed. Rep. 957. As to the duty of a tug without steam to get way on her, see *The Byron*, *infra*, p. 392.

(*z*) *The American* and *The Syria*, L. R. 6 P. C. 127.

As to the meaning of "under way" and "at anchor," see the cases cited under Arts. 2 and 11.

Rules concerning Lights, &c.

Article 1.

The word "visible" in these rules, when applied to lights, shall mean visible on a dark night with a clear atmosphere.

Article 1.

The rules concerning lights shall be complied with in all weathers from sunset to sunrise, and during such time no other lights which may be mistaken for the prescribed lights shall be exhibited.

This Article corresponds with Art. 2 of the Regulations of 1884. The words "which may be mistaken for the prescribed lights" were not included in those regulations. They were probably inserted in consequence of a question which arose under former regulations, as to the legality of using a flare to attract the attention of a vessel coming dangerously near the vessel using the flare (*a*). The use of the flare and of detonating signals in such a case is expressly authorized by the existing regulations, Art. 12.

It appears that by the maritime law there was no obligation upon a ship to carry a light at night. It depended upon the darkness of the night, and other circumstances, whether a light was necessary or not (*b*). Even so late as 1852, sailing ships did no more than exhibit a light as occasion required, though steamships were at that date by law required to carry lights as at present.

A tug is a steamship within the meaning of the regulations.

The effect of this Article, when read together with Article 3 and the following Articles, is to place a steamship towing another vessel in the same category, generally speaking, with other steamships; that is to say, the fact that she is engaged

(*a*) See *The Simla* and *The City of Lucknow*, Ship. Gazette, 8th March, 1884; *The Merchant Prince*, 10 P. D. 139; *The Narragansett*, 20 Blatchf. 37; *The Eleonora*, 17 Blatchf. 88.

(*b*) *The Victoria*, 3 W. Rob. 49; *The Iron Duke*, 4 Not. of Cas. 585; *The Londonderry*, *ibid.*, Suppl. xxxi. But see *contra*, *per* Dr. Lushington in *The Saxonia*, Lush. 410, as to a vessel at anchor.

in towing does not exempt her from the obligations otherwise imposed on her by the regulations (*e*). Article 1.

"No other lights" to be carried.

In America it was held that a ship was not in fault for having two riding lights instead of one, or for having cabin lights visible along her sides (*d*). This decision would probably be followed as regards the numerous electric lights which are now common about a large ship's decks. So, before a light was prescribed by law for a ship ashore (*e*), or being overtaken at night by a ship that appears not to see her, it was held that a ship was not in fault for showing over her stern to an approaching vessel a flare or one of her side lights (*f*); and that there was no duty cast upon a vessel being overtaken to show any light astern, until it became clear that the overtaking ship was not keeping out of the way (*g*). So in the case of a ship sunk (*h*) in a navigable channel, or casting off from her moorings (*i*), it was held that she was not wrong in exhibiting a light, though not required to do so by law.

The duty of lighting sunken ships and wrecks is, under certain circumstances, cast upon the harbour or lighthouse authority of the district (*k*). Care should be taken that the lights used for this purpose are not such as may mislead other vessels. In an unreported case (*m*), a collision with a wreck was caused by the wreck being lit with two vertical white lights, which were mistaken for those of a tug.

If lost must be replaced.

It is the duty of a ship that has lost her lights by bad weather or other accident to replace them as soon as possible (*n*).

(*e*) *The American* and *The Syria*, L. R. 4 A. & E. 226; S. C., on app. *ibid.* 6 P. C. 127; *The Warrior*, L. R. 3 A. & E. 553.

(*d*) *The Avon*, 22 Fed. Rep. 905.

(*e*) *The Industrie*, L. R. 3 A. & E. 303; *The Thomas Lea*, 3 Asp. M. C. 260.

(*f*) *The Anglo-Indian*, 3 Asp. M. C. 1; *The Merchant Prince*, 10 P. D. 139; not followed in America, *The Algiers*, 38 Fed. Rep. 526.

(*g*) *The Jane Bacon*, 27 W. R. 35.

(*h*) *The Douglas*, 7 P. D. 151.

(*i*) *The John Fenwick*, L. R. 3 A. & E. 500.

(*k*) See 40 & 41 Vict. c. 16, and the various local Acts. *Dormont* v. *Furness Rail. Co.*, 11 Q. B. D. 496, was a case where the duty was held to be cast upon the local authority. See also cases cited, *supra*, pp. 88 *seq.*

(*m*) Ad. Div. 1885.

(*n*) *The Saxonia* and *The Eclipse*, Lush. 410, 422; *The Aurora* and *The Robert Ingram*, Lush. 327; *The Gray Eagle*, 1 Bissel, 476; 2 Bissel, 25.

Article 1.

Lights being trimmed.

It is no excuse for not carrying the regulation lights that they were being trimmed or went out by accident (*o*).

Misleading lights.

A wrong light or a light in a wrong position will almost certainly cause the ship carrying it to be held in fault, if it could by possibility have misled the other ship (*p*). It is an infringement of Art. 1, and therefore it is not necessary for the latter to prove that she was in fact misled (*q*). It lies upon those who are admittedly in fault in respect of the light to make out beyond all doubt that the light was in such a position that it must have been seen (*r*).

Spare lights.

Notwithstanding the express terms of the regulations, that the lights shall be carried, it seems that a ship will not necessarily be held in fault for a collision caused by the absence of lights, or by improper lights, if the regulation lights have been destroyed, and there are no spare ones on board. The point, however, has not been expressly decided. A steamship at anchor, with her masthead light up instead of her proper riding light, was held free from blame. Her riding light had been broken shortly before the collision in a previous collision for which she was not in fault (*s*).

The duty to equip a ship with fog-signals before sailing upon a voyage, so that she may be able to comply with a regulation that is enacted, but not in force, when she sails, was insisted upon in *The Love Bird* (*t*). The same rule would apply to ship's lights.

Obscuration of lights.

The regulation lights must not be obscured in any way. A flare must not be burnt so as to blind them (*u*). If a steamship has the wind aft, so as to blow her smoke ahead and thereby obscure her lights, it is her duty to slacken and

(*o*) *The C. M. Palmer* and *The Larnax*, 2 Asp. M. C. 94; *The Eclipse* and *The Saxonia*, *supra*; *The Victoria*, 3 W. Rob. 49; *The Sylph*, 2 Sp. 75, 85.

(*p*) *The Scotia*, 7 Blatchf. 308; 14 Wall. 170; *The Benares*, 9 P. D. 16; *The Rob Roy*, 3 W. Rob. 190; *The Mary Hounsell*, 40 L. T. 368; *The Lorne*, 2 Stuart's V. Ad. Rep. (Canada) 177 (ship at anchor with a green light showing); *The Haverton*, 31 Fed. Rep. 563 (a pilot boat with side lights and no masthead light).

(*q*) *The Talbot*, (1891) P. 184; *The Nessmore*, 50 Fed. Rep. 616; *La Champagne*, 60 Fed. Rep. 299; *The Excelsior*, 39 Fed. Rep. 393.

(*r*) *Per* Halsbury, C., *The Gannet*, (1900) App. Cas. 234.

(*s*) *The Kjobenhavn*, 2 Asp. M. C. 213. But see *The Sylph*, 2 Sp. 75; *The Rob Roy*, 3 W. Rob. 190; *The C. M. Palmer*, 2 Asp. M. C. 94; *The Benares*, 9 P. D. 16; for cases of ship's lights going out and misleading the other ship.

(*t*) 6 P. D. 80.

(*u*) *The Sea Nymph of Chester*, Holt, 34.

not go at full speed (*x*). Where a ship carried a bright light in her cabin, which showed on deck and obscured her side lights, and the other ship alleged that she mistook it for a riding light, the former was held in fault for the collision (*y*). Where a tow lashed alongside had hoisted her foresail so as to obscure the tug's side lights, both tug and tow were, in America, held in fault (*z*); so where the tug's side lights were obscured by a car float lashed alongside (*a*). Where a ship carried her lights aft, it was held in America that the burden was on her to show that they were not obstructed by the sails or ship's side (*b*). Article 1

The fact that it is only a short time after sunset, and fine and clear weather, does not relieve a ship from the obligation to carry lights. Under the Admiralty Regulations as to lights it was held that "it is not to be said that because it was a bright night it was not necessary to obey the Act of Parliament" (*c*). By the existing regulations vessels are expressly required to carry them in all weathers. When, on account of bad weather, it is not possible to carry them fixed, Art. 6 may apply, and proper lights must be exhibited from the deck (*d*). Lights to be always carried.

Special lights are required by local Acts and rules to be exhibited by barges, dredgers, and other craft in the Thames, Mersey, Clyde, Humber, Ouse, and Trent rivers, and in various other rivers, harbours, canals, and navigable waters (*e*). Private signal lights for vessels belonging to the same owner, and flash lights (*f*) for drift-net fishing-boats (*g*), and quarantine (*h*) lights (a lantern at the masthead, or in case of plague two lanterns), are also enjoined by statute when in sight of other ships or within two leagues of the United Special lights required by local rules.

(*x*) *The Rona* and *The Ara*, 2 Asp. M. C. 182.

(*y*) *The Ida* and *The Mary Ida*, Ad. Div. Feb. 5th, 1878.

(*z*) *The W. A. Levering*, 36 Fed. Rep. 511.

(*a*) *The Titan*, 23 Fed. Rep. 413; *Marshall* v. *The Conroy*, 2 Fed. Rep. 785; *The H. W. Hills*, 21 Fed. Rep. 727; *The Buffalo*, 50 Fed. Rep. 628. Cf. *The Scavanous*, 34 Fed. Rep. 68; *The Manhasset*, 34 Fed. Rep. 408, *aliter*.

(*b*) *The Caro*, 23 Fed. Rep. 734.

(*c*) *The City of London*, Swab. 245, 249.

(*d*) See *infra*, p. 348.

(*e*) For the Thames, Mersey, and other local regulations, see the Appendix, *infra*. As to local rules generally, see Art. 30, *infra*.

(*f*) 36 & 37 Vict. c. 85, ss. 18–21

(*g*) As to these, see Art. 9, *infra*.

(*h*) 6 Geo. 4, c. 78, ss. 8, 9. This Act appears to be still in force.

Article 1.

Kingdom. The signals for pilots (*i*) are, by day, the pilot jack or certain other flag or cone and ball signals; by night, a blue light or a flare shown over the bulwark for one minute. As to distress signals, see Art. 31, *infra*.

In American, Swedish, and other foreign waters, and in some British and colonial waters, ships are required to carry lights other than those described in Art. 2.

Consequences of not carrying lights to shipowner and master.

A master or owner wilfully neglecting to carry lights in accordance with the regulations is guilty of a misdemeanour, and punishable with a fine of 100*l.* or imprisonment for six months (*k*). And a ship proceeding to sea may be stopped, if she is not properly supplied with lights ands creens, or if they are improperly placed (*l*). It has been held that, as regards third parties, the shipowner, and not the pilot, is responsible for proper lights being carried (*m*).

Article 2.

Article 2.

A steam vessel when under way shall carry:—

(*a*) *On or in front of the foremast, or if a vessel without a foremast, then in the fore part of the vessel, at a height above the hull of not less than twenty feet, and if the breadth of the vessel exceeds twenty feet, then at a height above the hull not less than such breadth, so, however, that the light need not be carried at a greater height above the hull than forty feet, a bright white light, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, viz., from right ahead to two points abaft the beam on either side, and of such a character as to be visible at a distance of at least five miles.*

(*b*) *On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of*

(*i*) See Ord. in Council of 29th June, 1900, made under the Merchant Shipping Act, 1894, s. 615, and 52 & 53 Vict. c. 63, s. 37.

(*k*) 57 & 58 Vict. c. 60, s. 419.

(*l*) 57 & 58 Vict. c. 60, s. 420. And see, as to fishing craft, 46 & 47 Vict. c. 92, ss. 6, 12.

(*m*) *The Ripon*, 10 P. D. 65.

Article 2.

ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least two miles.

(*c*) *On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible at a distance of at least two miles.*

(*d*) *The said green and red side lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.*

(*e*) *A steam vessel when under way may carry an additional white light similar in construction to the light mentioned in sub-division* (*a*). *These two lights shall be so placed in line with the keel that one shall be at least fifteen feet higher than the other, and in such a position with reference to each other that the lower light shall be forward of the upper one. The vertical distance between these lights shall be less than the horizontal distance.*

This Article corresponds with Art. 3 of the regulations of 1884. The present Article differs from the old Article both in language in a few cases and also in the following respects: (1) it applies to all steam vessels, whereas Art. 3 of 1884 applied to "seagoing steamships" only; (2) the provisions in sub-division (a) as to the position of the mast-head light in vessels having no foremast, and as to its height, are new; (3) the provision in sub-division (e) for the optional carrying of a range light is new.

Coloured side lights were first required for steamships by rules made by the Admiralty in 1852 under the powers of 14 & 15 Vict. c. 79. In 1858 they were first required to be carried by sailing ships.

A British steam trawler is not a "steam vessel" within Art. 2, special lights being provided for her by a subsequent Article.

Article 2.

By the preliminary Article a ship is defined to be "under way" when she is "not at anchor, or fast to the shore, or aground." So a ship fast to another that is moored or brought up, or to a buoy, boom, or other fixed object, would, it is submitted, be held not to be under way within the meaning of Art. 2. A ship getting her anchor is "under way" so soon as she ceases to be holden by and under the control of her anchor (*n*). A steam tug waiting for employment and drifting in the sea (*o*), or lashed alongside and towing a ship up to her anchor (*p*), or ready to hold her if her anchor comes home (*q*), a ship riding to her chains with anchors unshackled (*r*), and a sailing ship hove to (*s*), are under way and required to carry side lights. So a ship riding to a sea anchor, or with her anchor off the ground, up and down, in deep water, would, it seems, be required to carry side lights (*t*).

A ship dropping or dredging with the tide, stern foremost, is under way and required by Art. 2 to carry her side lights (*u*); but a Thames sailing barge, with her mast lowered, was held not to be a "sailing vessel under way" within the meaning of the Thames Rules (*v*). Under former regulations there are contradictory decisions as to the duty of a vessel driving in the sea in an unmanageable state, with regard to carrying side lights (*x*). Such a case is now provided for by Art. 4. The phrase "under way" occurs also in that Article, and has been the subject of discussion in the House of Lords and elsewhere (*y*).

A steam vessel under sail, and not under steam, but with her funnel up, is a sailing ship within the meaning of Art. 2,

(*n*) *The Esk* and *The Gitana*, L. R. 2 A. & E. 350. It seems that she is "at anchor" whilst being towed up to her anchor, so long as the anchor is not broken out of the ground: *The Romance*, (1901) P. 15.

(*o*) See *The Jennie S. Barker* and *The Spindrift*, *supra*, p. 333.

(*p*) *The Romance*, (1901) P. 15.

(*q*) *The Devonian*, (1901) P. 221.

(*r*) *The Faedrelandet*, (1895) P. 205.

(*s*) *The Rosalie*, 5 P. D. 245; *The City of London*, Swab. 245; *The James*, Swab. 60.

(*t*) For cases on the meaning of "at anchor," see under Art. 11 at p. 362.

(*u*) *The Hollandia* and *The John Ormston* (two steamships), Court of Appeal, 15th June, 1885; but under former regulations Dr. Lushington seems to have held otherwise. See *The Smyrna*, mentioned in *The George Arkle*, Lush. 382, 385.

(*v*) *The Indian Chief*, 14 P. D. 24; and see *The Juno*, 7 Asp. M. C. 506.

(*x*) *The George Arkle*, Lush. 382; *The Buckhurst*, 6 P. D. 152.

(*y*) See *The P. Caland*, *infra*, p. 346.

Article 2.

and must carry side lights and no mast-head light; but by Art. 14 she is required to carry in the daytime a black ball or shape.

In America, under former regulations, a tug "at rest" (*z*), and a sailing ship hove-to (*a*), were held not to be under way. The decisions are contrary to the English cases; but the definition of "under way" contained in the existing regulations sets the matter at rest.

The regulations as to the fitting of ships' lights must be exactly observed.

There is some doubt whether lights carried elsewhere than in the position described in Art. 2 are in accordance with the law, although the lights are visible in the required directions, and are in other respects sufficient (*b*). The side lights must be so fixed that their range is such as is described in the Article. If they are liable to be unnecessarily obscured by the sails, rigging, or other part of the ship, they do not comply with the law (*c*).

Board of Trade instructions as to ships' lights.

Minute instructions are issued by the Board of Trade to their surveyors with regard to the fixing and construction of ships' lights. These instructions have not the force of law, so that a ship should be held in fault for a collision merely because her lights are not fitted in accordance with them (*d*).

A ship whose side lights were fixed on the top of a galley, or deck house, seven feet high and six feet broad, so that each light was seven feet inboard from the ship's side, was held not to be in fault, the lights being properly screened and visible in the required directions (*e*).

Slight infringement of the regulations may be immaterial.

Although the requirements of Art. 2 are not exactly complied with, the ship guilty of the infringement will not be held to be in fault for a collision that could not possibly have been caused by the infringement of the law. In *The Fanny M. Carvill* (*f*) it was held that the lights of the other ship

(*z*) *The America*, 29 Fed. Rep. 304.

(*a*) *The Alfredo*, 32 Fed. Rep. 240.

(*b*) Upon the regulations of 1863, the law officers of the Crown advised that it was not; see Parl. Paper, No. 53 of 1874.

(*c*) *The Tirzah*, 4 P. D. 33; *The Magnet; The Duke of Sutherland; The Fanny M. Carvill*, L. R. 4 A. & E. 417; *The Fanny M. Carvill* (on app.), 2 Asp. M. C. 565; *The Duke of Buccleugh*, (1891) App. Cas. 310; *The Circassia*, 53 Fed. Rep. 113.

(*d*) *The Magnet; The Duke of Sutherland; The Fanny M. Carvill, ubi supra.*

(*e*) *The City of Carlisle*, Br. & Lush. 363; *The Samuel H. Crawford*, 6 Fed. Rep. 906.

(*f*) L. R. 4 A. & E. 417; on app. 2 Asp. M. C. 565. In *The Emperor* and *The Lady of the Lake*, Holt, 37, Lord Chelmsford said that the regulations are satisfied only by a "close

Article 2.

not having in fact been seen across her bow, she was not in fault for the collision. And in *The Duke of Sutherland* (*g*) one of two ships in collision was held not to be in fault, although her side lights were partially obscured by the cat-head, the obscuration not being such as would have prevented the other from seeing the former in time to avoid her if she had exercised proper skill. Again, in *The Chusan* (*h*), a trawler carrying a bright mast-head light in addition to side lights was held free from blame for collision with a steamer, on the ground that those on board the steamer not having seen the bright light, it could not possibly have contributed to the collision.

Before the enactment of 36 & 37 Vict. c. 85, s. 17, a sailing ship was held not to be in fault, even upon the assumption that her side lights were so fixed in the mizzen rigging that they were not visible in the directions required by the regulations, it being proved that the other vessel, a steamship, might, by slackening her speed and using proper care, have avoided her, notwithstanding the suggested insufficiency of her side lights (*i*). And in another case (*k*), where the screens of one ship were only a foot in length, and the side lights could be seen across the bow, it was held that she could recover against the other ship for a collision, it being proved that the lights were not in fact seen across the bow. A schooner's side lights were so screened that both were visible to a person standing on her own deck at the ship's stem. It was held in America that they were not in accordance with the law (*l*). And a sloop with no screens to her side lights was held in fault for a collision with another vessel also in fault for not keeping clear of her (*m*). Under the existing law, however, any infringement of the regulations as to lights,

and literal adherence to what they prescribe." But see *The Fire Queen*, *supra*, p. 55.

(*g*) L. R. 4 A. & E. 417. *The Duke of Buccleuch*, 15 P. D. 86, was a similar case, the obscuration being by the foot of the fore sail, but the positions of the ships being such that it could not have affected the collision. Cp. *The Hermod*, 6 Asp. M. C. 509.

(*h*) 5 Asp. M. C. 476.

(*i*) *The Bougainville* v. *The Jas. C. Stevenson*, L. R. 5 P. C. 316.

(*k*) *The Emperor* v. *The Lady of the Lake*, Holt, 37, 202.

(*l*) *The Alhambra*, 4 Fed. Rep. 86; but, as the fault did not contribute to the collision, the schooner was not held liable.

(*m*) *The Alabama*, 10 Fed. Rep. 394.

which might by possibility have contributed to the collision, would be held to be negligence contributing to the collision (*n*). Article 2.

Where the side lights were fixed to the pawl bitts, and the other ship alleged that she could not see them, it was held that the ship so carrying them was in fault for the collision (*o*). A ship having in tow a pilot boat, which carried a mast-head light and no side lights, was held in fault (*p*).

It is not clear whether the distance at which the lights are to be visible is stated in statute or nautical miles. In the French regulations the distance is given as *deux milles*. Visibility of lights.

The power of ordering inspection of a ship's lights, alleged to be deficient, given to the judge of the Admiralty Court by statute (*q*), was exercised by Sir R. Phillimore in *The Magnet* (*r*). The Trinity masters having inspected them and found them visible for less than two miles, the ship was held in fault under the statute (*s*). Inspection by the Court.

Article 3.

Article 3.

Lights for steam vessels towing.

A steam vessel when towing another vessel shall, in addition to her side lights, carry two bright white lights in a vertical line one over the other, not less than six feet apart, and when towing more than one vessel shall carry an additional bright white light six feet above or below such lights, if the length of the tow, measuring from the stern of the towing vessel to the stern of the last vessel towed, exceeds 600 *feet. Each of these lights shall be of the same construction and character, and shall be carried in the same position as the white light mentioned in Art.* 2 (*a*), *except the additional light, which may be carried at a height of not less than fourteen feet above the hull.*

Such steam vessel may carry a small white light abaft the funnel or after-mast for the vessel towed to steer by, but such light shall not be visible forward of the beam.

(*n*) *The Tirzah*, 4 P. D. 33; *The Dunelm*, 9 P. D. 164. See *supra*, pp. 39 *seq.*

(*o*) *The New Ed* v. *The Gustav*, 9 L. T. 547.

(*p*) *The Mary Hounsell*, 4 P. D. 204.

(*q*) 24 Vict. c. 10, s. 18.

(*r*) L. R. 4 A. & E. 417.

(*s*) In *The Duke of Buccleuch*, *ubi supra*, the Trinity Brethren inspected *The Vandalia*, with her sails set and her lights in position, for the purpose of seeing the effect of the former in obscuring the latter.

Article 3.

This Article corresponds with Art. 4 of the Regulations of 1884. The provisions as to (1) the distance between the lights, (2) the additional light where the tow exceeds 600 feet, and (3) the steering light first appeared in the present Article.

The distinguishing lights of the tug are "for the purpose of warning all approaching vessels that she is not in all respects mistress of her movements" (*t*), and to show that she is encumbered. It would seem that as soon as the tow line is fast, and so long as it is fast, the towing lights should be up. A tug fast alongside a ship at anchor and towing her up to her anchor (*u*), or ready to hold her up to her anchor if it comes home, or if the cable parts, must exhibit her towing lights and her side lights (*x*).

The regulations contain no provision for lights to distinguish a sailing ship towing another vessel.

Article 4.

Article 4.

Lights and signals for vessels not under command.

(*a*) *A vessel which from any accident is not under command shall carry at the same height as the white light mentioned in Art.* 2 (*a*), *where they can best be seen, and, if a steam vessel, in lieu of that light, two red lights, in a vertical line one over the other, not less than six feet apart, and of such a character as to be visible all round the horizon at a distance of at least two miles; and shall by day carry in a vertical line one over the other not less than six feet apart, where they can best be seen, two black balls or shapes each two feet in diameter.*

(*b*) *A vessel employed in laying or in picking up a telegraph cable shall carry in the same position as the white light mentioned in Art.* 2 (*a*), *and if a steam vessel, in lieu of that light, three lights in a vertical line one over the other, not less than six feet apart. The highest and lowest of these lights shall be red, and the middle light shall be white, and they shall be of such a character as to be visible all round the horizon, at a distance of at least two miles. By day she shall carry in a vertical line one over the other, not less than six feet apart, where they can best be*

(*t*) *The American* and *The Syria*, L. R. 6 P. C. 127, 131.

(*u*) *The Romance*, (1901) P. 15.

(*x*) *The Devonian*, (1901) P. 221; so held by the Court of Appeal. *Sed qu.*

Article 4.

seen, three shapes not less than two feet in diameter, of which the highest and lowest shall be globular in shape and red in colour, and the middle one diamond in shape and white.

(c) The vessels referred to in this Article when not making way through the water, shall not carry the side lights but, when making way shall carry them.

(d) The lights and shapes required to be shown by this Article are to be taken by other vessels as signals that the vessel showing them is not under command and cannot therefore get out of the way.

These signals are not signals of vessels in distress and requiring assistance. Such signals are contained in Art. 31.

This Article corresponds with Art. 5 of the Regulations of 1884. There are certain verbal differences, and in the first paragraph two red lights are substituted for the three red lights of 1884.

Steamboats of less than forty tons, steam launches, sailing and rowing crafts of less than twenty tons, and row boats are by Art. 7 exempted from the operation of Art. 4 (a).

The words of paragraph (a) applying the Article to a ship "which from any accident is not under command" are vague, and have already given rise to difference of judicial opinion. They refer to a ship afloat and moving, not to a ship hard and fast aground (*y*). In the ordinary course of navigation a ship is sometimes not under command; a steam or sailing-ship hove-to in heavy weather, a sailing-ship in a calm, a heavy ship in stays, a vessel with her anchor down but not holding, are common instances of such a case; but it is apprehended that Art. 4 does not apply in such circumstances, which cannot be said to be accidental (*z*). A vessel with headway on her, and therefore probably able to steer, may be "not under command" within the meaning of the Article, for it directs side lights to be carried in such circumstances, presumably for the purpose of indicating the direction of her head and course. It appears to be assumed in Art. 15 (e) that a vessel under way and unable to get out of

(*y*) *The Carlotta*, (1899) P. 223.

(*z*) So held of a vessel dragging through mud: *The Bellanoch*, (1907) A. C. 269. Also of a sailing ship hove to: *Burrows* v. *Gower*, 119 Fed. Rep. 616.

Article 4.

the way of another approaching her, or unable to manœuvre as required by the steering and sailing rules, is a vessel "not under command"; but it is not clear why different words are used to express the same thing.

"Making way through the water" appears to have a different meaning from "under way," which by the Preliminary Article is interpreted to describe a ship that is not at anchor, or made fast to the shore, or aground. The distinction between "under way" and "having no way on her" is strongly marked in Art. 15 (a) and (b). By Art. 11 a ship aground in or near a fairway is required to carry, in addition to her riding lights, the two red lights of a vessel not under command within the meaning of Art. 4 (a) (*a*).

A ship hard and fast ashore is not required to exhibit the two black balls (*b*).

Art. 4 does not in terms exclude the operation of the "meeting" and "crossing" and other rules of navigation for vessels approaching each other with risk of collision. It appears, however, that a duty is cast upon a vessel falling in with another vessel exhibiting the red lights to keep out of the way of the latter, and upon the vessel exhibiting such lights to keep her course and speed (*c*).

Art. 4 (a) has no application to ships at anchor or to a ship fast ashore (*d*); but, as already pointed out, by Art. 11 it is made to apply to a ship aground in or near a fairway.

The P. Caland (*e*) is an important decision upon the corresponding Article of the Regulations of 1884. A steamship, owing to a breakdown of one of her cylinders, was able to use one engine only, with which she was able to maintain a speed of from four to five knots. She had the red lights exhibited, but no side lights. In the House of Lords she was held in fault, both for exhibiting the red lights and for not exhibiting her side lights. In the Court below, Jeune, J., expressed the opinion that if a vessel is able to comply with the sailing rules for vessels approaching each other with risk

(*a*) In Germany, this was so held under the Regulations of 1884, which contained no provision for a ship aground: *The John Johansson*, 6 Asp. M. C. 39, note.

(*b*) *The Carlotta*, (1899) P. 223.

(*c*) *The Hawthornbank*, (1904) P. 120.

(*d*) *The Carlotta*, *ubi supra*.

(*e*) (1893) App. Cas. 207; in the Court of Appeal, (1892) P. 191.

Article 4.

of collision, she is not justified in exhibiting the red lights; and in the Court of Appeal Fry, L. J., took a similar view. In the Court of Appeal Lord Esher, M. R., said that a vessel that is, in fact, under command, is not justified in exhibiting the three red lights, merely because she may shortly be out of command. Lord Herschell, C., in the House of Lords, said that this was too narrow a view of the regulation, and that a steamship with her machinery in such a condition that she might at any moment be unable to keep out of the way of an approaching vessel would be justified in showing the three red lights, and not the less so because she was able to keep moving ahead; but that it must depend upon circumstances whether she is justified in moving ahead at all. Lord Watson concurred in this view of the law.

This decision has been followed in Scotland, where it was held that a steamship which by reason of injuries sustained in collision was unable to go at full speed, but whose engines and steering gear were intact, was not justified in exhibiting the "not under command" signals (*f*).

It may be observed that those in charge of an injured vessel may, in considering the advisability of exhibiting "not under command" signals, take into consideration the nature of the traffic with which they may expect to fall in. Thus, a sailing ship making from off Dover to the Downs, which, by reason of injuries, could only act slowly for other vessels, was held justified in exhibiting these signals, regard being had to the crowded nature of Channel traffic (*g*).

In *The Faedrelandet* (*h*) it was held that a steamship riding in the sea to her chains, with anchors unshackled, should exhibit the three red lights.

In *The Buckhurst* (*i*), a sailing ship parted from her anchors in a gale and drove over Cardiff sands, so that she injured her rudder and became unmanageable. She did not exhibit the three red lights, but it was held that she was not therefore to be held in fault under 36 & 37 Vict. c. 85, s. 17. The importance of the decision, however, is lessened by the

(*f*) *William Cory & Son, Ltd.* v. *Kopajtic*, Sc. Law Rep. XLV. 216.
(*g*) *The Hawthornbank*, (1904) P. 120.
(*h*) (1895) P. 205.
(*i*) 6 P. D. 152.

Article 4.

finding of the learned judge that the circumstances made a departure from the regulations necessary, and that the absence of the lights could not have contributed to the collision.

Article 5.

Article 5.
Lights for sailing ships.

A sailing vessel under way, and any vessel being towed, shall carry the same lights as are prescribed by Art. 2 for a steam vessel under way, with the exception of the white lights mentioned therein, which they shall never carry.

This Article corresponds with Art. 6 of the Regulations of 1884.

"Under way": meaning of the term.

A ship hove-to is under way within the meaning of Article 5 (*k*). It was so held under the Regulations of 1863 (*l*); and a ship hove-to comes under the steering and sailing rules (*m*).

A vessel coming to an anchor while hauling down her jibs, and having little or no way on her, was carrying her side lights; it appears that she was right in doing so (*n*).

It has been said that, where a vessel parted from her anchors and drove over a sand in an unmanageable state, owing to her rudder being disabled, it would have been wrong for her to have exhibited her side lights (*o*).

Article 6.

Article 6.
Special lights for small vessels.

Whenever, as in the case of small vessels under way during bad weather, the green and red side lights cannot be fixed, these lights shall be kept at hand lighted and ready for use; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be

(*k*) See the definition, *supra*, p. 333.

(*l*) *The Pennsylvania*, 23 L. T. 55. The Supreme Court of the U. S. came to the same decision upon the same facts: *The Pennsylvania*, 19 Wall. 125.

(*m*) *The Rosalie*, 5 P. D. 245; *The City of London*, Swab. 245; *The James*, *ibid.* 55. The words of the regulation under which these cases were decided are "under sail." See Swab. App. 1, for these rules. The same words, "under sail," occur in the rules made under 17 & 18 Vict. c. 104, s. 295. As to "under way," see pp. 333, 340.

(*n*) *The Adriatic*, 3 Asp. M. C. 16.

(*o*) *The Buckhurst*, 6 P. D. 152.

seen on the port side nor the red light on the starboard side, nor, if practicable, more than two points abaft the beam on their respective sides. Article 6.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with proper screens.

This Article is almost identical with Art. 7 of the Regulations of 1884.

It is not easy to see to what vessels the Article has application. Art. 10 provides for boats, and there are few craft other than boats in which side lights "cannot be fixed" and carried even in the worst weather, if properly fitted. It was assumed in a case in Ireland that a full-decked trawler of 41 tons cannot conveniently work her trawl with side lights fixed, and that such a vessel may carry them on deck, even in fine weather and when not at work (*p*). This can scarcely have been the intention of the framers of Art. 6. What vessels may carry their side lights on deck.

If a vessel seeks to excuse herself for not having her side lights fixed in their proper place, the burden is on her to prove that the lights could not with safety be carried fixed. In the case of a brig of 255 tons (*q*), and in another case of a vessel of 239 tons (*r*), the Court appears to have doubted whether it was practicable in bad weather to carry them fixed in the usual places. It is submitted that such vessels would not come within the operation of Art. 6.

Article 7.

Steam vessels of less than forty, and vessels under oars or sails of less than twenty, tons gross tonnage, respectively, and rowing boats, when under way, shall not be obliged to carry the lights mentioned in Art. 2 (a) (b) and (c), but if they do not carry them they shall be provided with the following lights:— Article 7. Lights for small craft.

1. *Steam vessels of less than forty tons shall carry—*

(a) In the fore part of the vessel, or on or in front of the funnel, where it can best be seen, and at a height

(*p*) *The Margaret* and *The Tuscar*, 15 L. T. 86.

(*q*) *The Livingstone*, Swab. 519; see also *The Calta*, *ibid.* 465.

(*r*) *The Tirzah*, 4 P. D. 33.

Article 7.

above the gunwale of not less than nine feet, a bright white light constructed and fixed as prescribed in Art. 2 (a), and of such a character as to be visible at a distance of at least two miles.

(b) Green and red side lights constructed and fixed as prescribed in Art. 2 (b) and (c), and of such a character as to be visible at a distance of at least one mile, or a combined lantern showing a green light and a red light from right ahead to two points abaft the beam on their respective sides. Such lantern shall be carried not less than three feet below the white light.

2. *Small steamboats, such as are carried by seagoing vessels, may carry the white light at a less height than nine feet above the gunwale, but it shall be carried above the combined lantern, mentioned in sub-division* 1 *(b).*

3. *Vessels under oars or sails, of less than twenty tons, shall have ready at hand a lantern with a green glass on one side and a red glass on the other, which, on the approach of or to other vessels, shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.*

4. *Rowing boats, whether under oars or sail, shall have ready at hand a lantern showing a white light, which shall be temporarily exhibited in sufficient time to prevent collision.*

The vessels referred to in this Article shall not be obliged to carry the lights prescribed by Art. 4 (a), and Art. 11, last paragraph.

This Article first appears in the Regulations of 1897.

Article 8.

Article 8.
Lights for pilot boats.

Pilot vessels, when engaged on their station on pilotage duty shall not show the lights required for other vessels, but shall carry a white light at the mast-head, visible all round the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes.

Article 8.

On the near approach of or to other vessels they shall have their side lights lighted, ready for use, and shall flash or show them at short intervals, to indicate the direction in which they are heading, but the green light shall not be shown on the port side, nor the red light on the starboard side.

A pilot vessel of such a class as to be obliged to go alongside of a vessel to put a pilot on board, may show the white light instead of carrying it at the mast-head, and may, instead of the coloured lights above mentioned, have at hand ready for use a lantern with a green glass on the one side and a red glass on the other, to be used as prescribed above.

Pilot vessels, when not engaged on their station on pilotage duty, shall carry lights similar to those of other vessels of their tonnage.

The following regulation, applicable only to the pilot craft and in the waters therein mentioned, was added by Order in Council of 7th July, 1897 :—

A steam pilot vessel exclusively employed for the service of pilots licensed or certified by any pilotage authority or the Committee of any pilotage district in the United Kingdom when engaged on her station on pilotage duty and in British waters and not at anchor shall in addition to the lights required for all pilot boats carry at a distance of eight feet below her white mast-head light a red light visible all round the horizon and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles and also the coloured side lights required to be carried by vessels when under way.

When engaged on her station on pilotage duty and in British waters and at anchor she shall carry in addition to the lights required for all pilot boats the red light above mentioned but not the coloured side lights.

When not engaged on her station on pilotage duty she shall carry the same lights as other steam vessels.

This Article corresponds (with additions) with Art. 9 of the Regulations of 1884.

It has been held that a pilot boat in tow of the ship to

Article 8.

which she had supplied the pilot was in fault for carrying her mast-head light (*s*).

A boat serving ships with pilots would seem to be a "pilot vessel" whether the pilots held licences or not (*t*).

A pilot vessel, within the limits of her station, is "engaged on her station on pilotage duty," not only whilst she is actually putting a pilot on board or taking him out of a ship, but whilst she is cruising or at anchor and on the look-out for ships. Unless, however, she is engaged in one of these ways, the fact that she is within the geographical limits of her station will not bring her within the definition (*u*).

The words of the first paragraph, "shall not show the lights required for other vessels," would seem to forbid the use by pilot boats of the stern light of Art. 10.

Neither the regulations, nor the Merchant Shipping Act, 1894, nor the Interpretation Act, 1889, contain any definition of "British waters." Perhaps they would be held to be waters within a marine league of low water mark of the United Kingdom. It would seem to be an infringement of Art. 8 for a steam pilot vessel to carry the red light in the Channel or elsewhere outside "British waters."

The Order in Council (No. 1) of 7th July, 1897, so far as it is in pursuance of 57 & 58 Vict. c. 60, s. 424, does not extend to the steam pilot vessel's red light directed by Order in Council (No. 2) of 7th July, 1897.

In America, a ship that ran down the boat from which she was taking her pilot was held alone in fault, though the pilot boat had a wrong light; but in another case the pilot boat was held to be in fault for not complying with the regulations whilst she was approaching the vessel she had served in order to pick up her skiff (*x*). In a case where two competing pilot boats (a steamer and a schooner) collided, it was held that neither was in fault (*y*).

The object of the special lights for a pilot boat is, not only to apprise other vessels of the presence of a pilot, but also to enable them to keep clear of her (*z*).

(*s*) *The Mary Hounsell*, 4 P. D. 204.
(*t*) See *The Mary Hounsell*, *supra*.
(*u*) *The Reginald*, 10 Asp. 519; *The Leo*, 34 Fed. Rep. 140.
(*x*) *The City of Washington*, 2 Otto, 31.
(*y*) *The Pilot*, 20 Fed. Rep. 860.
(*z*) *The Haverton*, 31 Fed. Rep. 563.

Article 8.

It has been held in America that it is no breach of the regulations, nor is it negligence, not to answer a pilot-boat's flare (*a*). Where a sailing ship by burning a flare in answer to a steamship's blue light misled the latter into thinking that she was a pilot-boat, the sailing ship was held in fault (*b*). The duty of a steamship to stop when taking her pilot on board has been insisted on (*c*).

As to signals for ships wanting pilots, see above, p. 338.

Article 9.

Article 9.

Fishing-vessels and fishing-boats, when under way and when not required by this Article to carry or show the lights hereinafter specified shall carry or show the lights prescribed for vessels of their tonnage under way.

(*a*) *Open boats, by which is to be understood boats not protected from the entry of sea water by means of a continuous deck, when engaged in any fishing at night with outlying tackle extending not more than* 150 *feet horizontally from the boat into the seaway, shall carry one all-round white light.*

Open boats, when fishing at night, with outlying tackle extending more than 150 *feet horizontally from the boat into the seaway, shall carry one all-round white light, and in addition, on approaching or being approached by other vessels, shall show a second white light at least* 3 *feet below the first light and at a horizontal distance of at least* 5 *feet away from it in the direction in which the outlying tackle is attached.*

(*b*) *Vessels and boats, except open boats as defined in subdivision* (*a*)*, when fishing with drift nets, shall, so long as the nets are wholly or partly in the water, carry two white lights where they can best be seen. Such lights shall be placed so that the vertical distance between them shall be not less than* 6 *feet and not more than* 15 *feet, and so that the horizontal distance between them, measured in a line with the keel, shall be not less than* 5 *feet and not more than* 10 *feet. The lower of these*

(*a*) *The Cambusdoon*, 30 Fed. Rep. 704.
(*b*) *The Wisconsin*, 23 Fed. Rep. 283, affirming 23 Fed. Rep. 831.
(*c*) *The Columbia*, 27 Fed. Rep. 704.

Article 9.

two lights shall be in the direction of the nets, and both of them shall be of such a character as to show all round the horizon, and to be visible at a distance of not less than 3 miles.

Within the Mediterranean Sea and in the seas bordering the coasts of Japan and Korea sailing fishing-vessels of less than 20 tons gross tonnage shall not be obliged to carry the lower of these two lights; should they, however, not carry it, they shall show in the same position (in the direction of the net or gear) a white light, visible at a distance of not less than one sea mile, on the approach of or to other vessels.

(*c*) *Vessels and boats, except open boats as defined in subdivision (a), when line-fishing with their lines out and attached to or hauling their lines, and when not at anchor or stationary within the meaning of subdivision (b), shall carry the same lights as vessels fishing with drift-nets. When shooting lines, or fishing with towing lines, they shall carry the lights prescribed for a steam or sailing vessel under way respectively.*

Within the Mediterranean Sea and in the seas bordering the coasts of Japan and Korea sailing fishing-vessels of less than 20 tons gross tonnage shall not be obliged to carry the lower of these two lights; should they, however, not carry it, they shall show in the same position (in the direction of the lines) a white light, visible at a distance of not less than one sea mile on the approach of or to other vessels.

(*d*) *Vessels, when engaged in trawling, by which is meant the dragging of an apparatus along the bottom of the sea—*

1. *If steam-vessels, shall carry in the same position as the white light mentioned in Art. 2 (a), a tricoloured lantern so constructed and fixed as to show a white light from right ahead to two points on each bow, and a green light and a red light over an arc of the horizon from two points on each bow to two points abaft the beam on the starboard and port sides respectively; and not less than 6 nor more than 12 feet below the tricoloured lantern a white light in a lantern, so constructed as to show a clear uniform and unbroken light all round the horizon.*

Article 9.

2. *If sailing-vessels, shall carry a white light in a lantern, so constructed as to show a clear uniform and unbroken light all round the horizon, and shall also, on the approach of or to other vessels, show where it can best be seen a white flare-up light or torch in sufficient time to prevent collision.*

All lights mentioned in sub-division (*d*) 1 *and* 2 *shall be visible at a distance of at least* 2 *miles.*

(*e*) *Oyster dredgers and other vessels fishing with dredge-nets shall carry and show the same lights as trawlers.*

(*f*) *Fishing-vessels and fishing-boats may at any time use a flare-up light in addition to the lights which they are by this Article required to carry and show, and they may also use working lights.*

(*g*) *Every fishing-vessel and every fishing-boat under* 150 *feet in length, when at anchor, shall exhibit a white light visible all round the horizon at a distance of at least one mile.*

Every fishing-vessel of 150 *feet in length or upwards, when at anchor, shall exhibit a white light visible all round the horizon at a distance of at least one mile, and shall exhibit a second light as provided for vessels of such length by Article* 11.

Should any such vessel, whether under 150 *feet in length, or of* 150 *feet in length or upwards, be attached to a net or other fishing gear, she shall on the approach of other vessels show an additional white light at least* 3 *feet below the anchor light, and at a horizontal distance of at least* 5 *feet away from it in the direction of the net or gear.*

(*h*) *If a vessel or boat when fishing becomes stationary in consequence of her gear getting fast to a rock or other obstruction, she shall in daytime haul down the day signal required by sub-division* (*k*); *at night show the light or lights prescribed for a vessel at anchor; and during fog, mist, falling snow, or heavy rain-storms make the signal prescribed for a vessel at anchor.* (*See sub-division* (*d*), *and the last paragraph, of Article* 15.)

(*i*) *In fog, mist, falling snow, or heavy rain-storms, drift-net vessels attached to their nets, and vessels when trawling,*

Article 9.

dredging, or fishing with any kind of drag-net, and vessels line fishing with their lines out, shall, if of 20 *tons gross tonnage or upwards, respectively, at intervals of not more than one minute make a blast; if steam-vessels, with the whistle or syren, and if sailing-vessels, with the fog-horn; each blast to be followed by ringing the bell. Fishing vessels and boats of less than* 20 *tons gross tonnage shall not be obliged to give the above-mentioned signals; but if they do not, they shall make some other efficient sound signal at intervals of not more than one minute.*

(*k*) *All vessels or boats fishing with nets or lines or trawls, when under way, shall in daytime indicate their occupation to an approaching vessel by displaying a basket or other efficient signal where it can best be seen. If vessels or boats at anchor have their gear out they shall, on the approach of other vessels, show the same signal on the side on which those vessels can pass.*

The vessels required by this Article to carry or show the lights hereinbefore specified shall not be obliged to carry the lights prescribed by Article 4 (*a*), *and the last paragraph of Article* 11.

This Article came into force on the 1st May, 1906, by virtue of an Order in Council dated 4th April, 1906, and takes the place of Art. 10 of the Regulations of 1884 and the Orders in Council of 30th December, 1884, 24th June, 1885, and 23rd October, 1905, which amended it. The Article is to be read and construed as though it had formed Art. 9 of the Regulations of 1897, and has therefore application to all British ships and to all foreign ships within the jurisdiction (*a*). Inasmuch as it provides a complete code in regard to fishermen's lights it must be held to supersede the various Acts of Parliament and Orders in Council which formerly controlled the rights of fishing-vessels to which Art. 10 did not apply (*b*). It would seem doubtful whether the Article

(*a*) In virtue of sect. 418 of the Merchant Shipping Act, 1894.

(*b*) The Acts and Orders referred to in the text are as follows:—6 & 7 Vict. c. 79; 25 & 26 Vict. c. 63; 31 & 32 Vict. c. 45; 38 Vict. c. 15; 40 & 41 Vict. c. 42; 46 & 47 Vict. c. 22; Orders in Council of the following dates: 9th January, 1863; 6th January, 1869; 14th August, 1879; 24th March, 1880; 26th August, 1881; 18th August, 1882; 23rd August, 1883; 2nd February, 1884; and a notice pursuant to 46 & 47 Vict. c. 22, s. 29, 17th November, 1888 (as to Danish boats), dated 26th

Article 9.

can be applied to foreign vessels outside the jurisdiction until it has been applied to the nations to which such vessels belong, by Order in Council under sect. 424 of the Merchant Shipping Act of 1894.

"Fishing with drift nets."

The only words in the present Article which have so far received attention are "fishing with drift-nets" (under sub-s. (b)), and "when engaged in trawling" (under sub-s. (d)). In the case of *The Cockatrice* (*c*) it was held, that a steam-drifter is not "fishing with drift-nets" within the meaning of the Article, which, having cast off and buoyed her nets, steams off towards a trawler, which she believes to have become entangled with the nets. The drifter was accordingly held to blame for not having shown the ordinary under way lights.

"When engaged in trawling."

In this case it was urged on behalf of the drifter that the trawler, with whom she collided, was at fault, inasmuch as she had shown the triplex trawling light, required by sub-s. (d), not only while her trawl was down, but also during the interval between hauling up and shooting the trawl, an operation which she had completed some ten minutes before the collision. It was held that she was justified in exhibiting the triplex light during this interval. This case is to be distinguished from that of *The Upton Castle* (*d*), where a trawler was held at fault for exhibiting the trawling lights—then authorised by Order in Council—when she had finished trawling, and she was proceeding with her engines working at full speed ahead. Both cases were decided by Bargrave Deane, J., who distinguished them as follows:—"I think a distinction has to be drawn. If a trawler, immediately after hauling her net, without going to any other ground, shoots her trawl, then she is still fishing during the interval; but if she changes her ground, then she must change her lights" (*e*).

Former option as to lights.

Under the present Article the option which was formerly given to trawlers in respect of lights, and which has caused

March, 1884 (as to the Sea Fisheries Act, 1883).

(*c*) *The Cockatrice*, (1908) P. 182.

(*d*) *The Upton Castle*, (1906) P. 147.

(*e*) *The Cockatrice*, (1908) P. 182, at p. 188. In America *The Nellie Clark*, 50 Fed. Rep. 585, where a lobster-boat "fast" to her trawl, on the port tack, was held not to be in fault for not keeping out of the way of a schooner on the starboard tack.

Article 9.

difficulties (*f*), has been withdrawn. Under the Orders in Council, by which this option was conferred, a trawler was authorised to show either extraordinary lights indicative of her employment or else the ordinary under way lights. It was judicially held that if the trawler had sufficient way on her to act with effect for an approaching ship, then it was her duty to exhibit the ordinary under way lights. If, however, she had no more than just steerage way and had therefore little power of keeping out of the way of another vessel, then it was her duty to show the extraordinary lights (*g*). Under the present Article one set of lights is prescribed for steam-vessels and one set for sailing-vessels (*h*), trawling. While this system has manifest advantages, it is submitted that it affords less indication to an approaching vessel, than did the old system, of the power of complying with the regulations, which the trawler deems herself to possess.

Vessel becoming stationary.

There is still a duty, under sub-s. (i), upon a vessel or boat becoming stationary in consequence of her gear getting fast, to behave as though at anchor (*i*).

Flare-up light.

The white flare-up light to be shown by sailing-trawlers on the approach of other vessels is to be shown "in sufficient time to prevent collision." Jeune, J., has held similar words only to apply when the vessels "are approaching one another under such circumstances that there exists a risk of collision" (*k*).

Fog signals.

The duty upon steam-trawlers to sound fog-signals is now beyond doubt (*l*).

Article 10.

Article 10.

Light for overtaken ship.

A vessel which is being overtaken by another shall show from her stern to such last-mentioned vessel a white light or a flare-up light.

(*f*) *The Dunelm*, 9 P. D. 164; *The Tweedsdale*, 14 P. D. 164; *The Upton Castle*, (1906) P. 147; see also *The Robert* and *The Ann*, Holt, 55; *The Englishman*, 3 P. D. 18; *The Edith*, Ir. Rep. 10 Eq. 345.

(*g*) *The Tweedsdale*, *supra*, at p. 171.

(*h*) Under the Regulations of 1884 there was a question as to sailing-trawlers: *The Chusan*, 5 Asp. M. C. 476.

(*i*) Cf. *The Warwick*, 15 P. D. 189.

(*k*) *The Orion*, (1891) P. 307 at p. 311. See *The Pieton*, (1910) P. 46.

(*l*) Under the Regulations of 1884 the application of Art. 10 to steam-trawlers was questioned: *The London*, (1904) P. 355.

Article 10.

The white light required to be shown by this Article may be fixed and carried in a lantern, but in such case the lantern shall be so constructed, fitted, and screened that it shall throw an unbroken light over an arc of the horizon of twelve points of the compass, viz., for six points from right aft on each side of the vessel, so as to be visible at a distance of at least one mile. Such light shall be carried as nearly as practicable on the same level as the side lights.

This Article corresponds with Art. 11 of the Regulations of 1884. The paragraph describing the position, fixing, and range of the stern light is new. It was inserted in consequence of decisions which threw doubt upon the legality of so carrying it (*m*). The provision against the side light and stern light showing at the same time is also new. There were previous decisions, on the former regulations, to the same effect (*n*).

Before the Regulations of 1880, which first provided for a stern light, there had been doubt as to whether it was not contrary to the regulations to show a light astern to an overtaking vessel (*o*).

Stern light to be shown, though no risk of collision.

The application of Art. 10 is not limited, as are the steering and sailing rules, to cases where there is risk of collision. It applies where the ship astern is broad on the quarter, and is broadening, so long as she is overtaking the ship ahead. And it is not necessary that she should be on a course such that there is or will be risk of collision (*p*).

When the duty arises.

The duty to exhibit the stern light "does not arise till the vessel which is being overtaken has had an opportunity of seeing that the vessel which is overtaking her is a vessel coming nearer to her, and that she is approaching upon such a course that she cannot see the lights of the overtaken ship. When the overtaking ship is seen to be thus approaching,

(*m*) *The Imbro*, 14 P. D. 73; *The Essequibo*, 13 P. D. 51; and see *The Breadalbane*, 7 P. D. 186; *The Pacific*, 9 P. D. 124; *The Stakesby*, 15 P. D. 166.

(*n*) *The Hubbuck*, Ad. Div. 28th June, 1887; *The Palinurus*, 13 P. D. 14; *The Fire Queen*, 12 P. D. 147.

(*o*) See *The City of Brooklyn*, 1 P. D. 277; *The Anglo-Indian*, 3 Asp. M. C. 1; *The Lena*, 14 L. T. 675; *The John Fenwick*, L. R. 3 A. & E. 500; *The Earl Spencer*, L. R. 4 A. & E. 431; aff. 2 Asp. M. C. 523; *The Oder*, 13 Fed. Rep. 272; *aliter The Cybele*, 5 Quebec L. R. 262.

(*p*) *The Main*, 11 P. D. 132.

Article 10.

then the duty arises to give the specified warning within a reasonable time, to afford an opportunity to the other vessel to keep out of the way" (*q*).

When it ceases.

It was held, in an early case (*r*) under this Article, that, after risk of collision had apparently ceased, the obligation to exhibit the stern light also ceased. But this decision was overruled in *The Main* (*ubi supra*). The stern light must be shown so long as the ship from which it is shown is being overtaken (*s*).

Overtaking vessel: definition.

Article 24 contains the definition of an "overtaking" vessel. "Every vessel coming up with another vessel from any direction more than two points abaft her beam" is overtaking the other. This definition, though framed, apparently, for the purpose of distinguishing an overtaking from a crossing vessel within the meaning of Arts. 24 and 17 respectively, would probably be held to apply to Art. 10.

Overtaken ship: definition.

A smack hove-to is "being overtaken" by another coming up with her astern, and is required to show the stern light (*t*). It would seem that to be an "overtaken" ship within the meaning of Art. 10, the ship must be under way; that a vessel at anchor is not required to show the stern light; and that a sailing ship beating to windward across the bows of a steamship, with her side light visible to the steamship, is being overtaken by the steamship when she puts her helm down to go about, and must show the stern light.

Look-out astern.

Art. 10 imposes upon those in charge of a ship the duty of keeping a look-out astern, and a ship would probably be held in fault, under 57 & 58 Vict. c. 60, s. 419, if she were struck by an overtaking ship to which she had not shown a stern light, when she might have shown it (*u*).

(*q*) *Per* Lord Herschell, *The Main*, 11 P. D. 132, 136.

(*r*) *The Reiher*, 4 Asp. M. C. 478. A smack hove-to observed the three lights of a steamship coming up with her astern. She showed her stern light until the steamship shut in her green, and then she ceased to show the light. The steamship then altered her helm again and ran into the smack. It was held (wrongly) that the smack, having exhibited her light until risk of collision was apparently determined, had complied with Art. 11, and was free from blame.

(*s*) See *per* Hannen, P., *The Esse-quibo*, 13 P. D. 51, 53; followed in *The Basset Hound*, 7 Asp. M. C. 467.

(*t*) *The Reiher*, 4 Asp. M. C. 478.

(*u*) *The Main*, 11 P. D. 132; *The Imbro*, 14 P. D. 73; *The Marion*, 56 Fed. Rep. 271; *Kennedy* v. *The Sarmatian*, 2 Fed. Rep. 911.

Article 10.

Binnacle light.

Fisherman's light.

The binnacle light, although visible astern, is not such a light as is required by Art. 10 (*x*).

In *The Pacific* (*y*) a smack was held in fault for exhibiting no light or flare to a steamship which overtook and ran into her. The smack had her trawl down, and was carrying, suspended from her weather cross-tree, a white light in a globular lantern. It was held that the light did not comply with the law.

Whether a pilot boat may use the stern light seems doubtful. See *supra*, p. 352.

Article 11.

Article 11.

A vessel under 150 *feet in length, when at anchor, shall carry forward, where it can best be seen, but at a height not exceeding* 20 *feet above the hull, a white light in a lantern so constructed as to show a clear, uniform, and unbroken light visible all round the horizon at a distance of at least one mile.*

A vessel of 150 *feet or upwards in length, when at anchor, shall carry in the forward part of the vessel, at a height not less than* 20, *and not exceeding* 40, *feet above the hull, one such light, and at or near the stern of the vessel, and at such a height that it shall be not less than* 15 *feet lower than the forward light, another such light.*

The length of a vessel shall be deemed to be the length appearing in her certificate of registry.

A vessel aground in or near a fairway shall carry the above light or lights and the two red lights prescribed by Art. 4 (*a*).

This Article corresponds with Art. 8 of the Regulations of 1884. The provision as to a second riding light, and as to ships ashore in a fairway, are new (*z*).

In *The Saxonia* (*a*), it was said by Dr. Lushington that, by the general law of the sea, a vessel at anchor, or a fishing-boat at work, is bound to carry a light, so as to enable vessels under way, whose duty it is to avoid her, to have an oppor-

(*x*) *The Breadalbane, ubi supra; The Patroclus*, 13 P. D. 54.

(*y*) 9 P. D. 124.

(*z*) But the principle was recognized in *The Industrie*, L. R. 3 A. & E. 303; *Kidson* v. *McArthur*, 5 Ct. of Sess. Cas. 4th ser. 936.

(*a*) Lush. 410.

Article 11.

tunity of doing so. But as to ships under way, there are decisions that by the maritime law they were not bound always to carry a light. Probably it would be held that at the present day the common law of the sea, in other words ordinary care and seamanship, apart from the regulations, requires a light in all cases. A riding light was first required by law in the year 1852.

"At anchor"; meaning of the phrase.

The exact meaning to be attached to the words "at anchor" has been the subject of controversy. By the preliminary Article of the regulations (*supra*, p. 333), "at anchor" is opposed to "under way," and is also distinguished from "made fast to the shore" and "aground." Various cases have revealed circumstances in which vessels have been held *not* to have been "at anchor" within the Article.

Thus a tug lashed alongside and towing a ship up to her anchor (*b*) is not herself at anchor, nor a tug ready to hold a ship if her anchor comes home (*c*), nor a vessel with her anchor down which is not in fact being held to or controlled by her anchor (*d*), nor a ship dropping or dredging stern foremost with her anchor a-trip (*e*), nor a vessel riding to her chains with the anchors unshackled (*f*), nor a tug lying moored to a pontoon landing-stage in a river (*g*), nor a trawler moored outside another trawler at a quay (*h*). It is submitted, that in the light of these cases, the true meaning to be attached to the words "at anchor," is the meaning which they would appear naturally to bear, and that a vessel "at anchor" is a vessel which is in fact being held to an anchor (*i*), such anchor being effectively employed for its normal purpose, that is, of keeping the ship in a fixed

(*b*) *The Romance*, (1901) P 15.

(*c*) *The Devonian*, (1901) P. 221.

(*d*) *The Esk* and *The Gitana*, L. R. 2 A. & E. 350.

(*e*) See *The Indian Chief*, 14 P. D. 24, for a decision to this effect under the Thames Rules (*infra*, p. 531).

(*f*) *The Faedrelandet*, (1895) P. 205.

(*g*) *The Titan*, *The Rambler*, (1906) 10 Asp. M. C. 350. This decision is under the Tyne Rules, see p. 528. In this case an anchor light was in fact exhibited. It is submitted that where a vessel is made fast in a fairway, although she may not be "at anchor" within the Rules, good seamanship may demand the exhibition of an anchor light. See also *The City of Seattle*, 9 Canad. Exchq. Rep. 146.

(*h*) *The Turquoise*, (1908) P. p. 149. In America it has been held, that a ship fast to another alongside a wharf should show a light or make some sound in fog. See *The Kennebec*, 108 Fed. Rep. 300.

(*i*) See *The Esk* and *The Gitana*, L. R. 2 A. & E. 350. It seems a vessel may be "at anchor" while being towed up to her anchor. See *The Romance*, *supra*.

relation to the ground (*j*). It is probably unnecessary that the anchor should be of any ordinary pattern, and a vessel made fast to a stone or other heavy object would probably be considered to be "at anchor" within the Article (*k*). It is submitted, however, that it would be placing an unduly strained interpretation on the phrase to apply it to a vessel moored to a landing-stage or buoy anchored to the ground. It may be that such a situation is not provided for specifically under the Rules, and that it must be regarded in the light of the requirements of good seamanship. Article 11.

A riding light should not be placed where it is obscured in any direction by masts, spars, sails, or rigging. The forestay is a usual, and probably the best, place for a riding light in an open roadstead or river. The foreshrouds is not so good a place (*l*). Care must be taken that sails and other gear likely to obscure the light are stowed (*m*), and a schooner has been held in fault because her mainsail was scandalised, instead of being stowed, and would obscure her riding light to a vessel astern (*n*). Riding light must not be obscured.

The words of the second paragraph, "in the forward part of the vessel," were held to be satisfied by a light which, on a ship of 313 feet in length, was in the foreshrouds, 72 feet from the stem (*o*); but a light in the main shrouds, 100 or 120 feet from the stern of a ship 455 feet long, was held not to be "at or near the stern" (*p*).

It is assumed that vessels at anchor are stationary (*q*), or nearly so; ships, therefore, when at anchor, must not be allowed to sheer about unnecessarily. Sheering about.

In America it has been held that a ship moored to a wharf out of the track of ships (*r*), and a man-of-war's launch in New York Harbour fast to a boom projecting sixty feet from American cases.

(*j*) See judgment of Sir F. H. Jeune, P., in *The Faedrelandet*, (1895) P. 205, at p. 209. For cases in which vessels have been found to be "under way," see under Art. 2 at p. 338.

(*k*) See *The Dunelm*, 9 P. D. 164, at p. 171.

(*l*) *The Pura*, Ad. Div. 4th March, 1886.

(*m*) See *The Hirondelle*, Ship. Gaz., Dec. 15th, 1905.

(*n*) *The Tolka*, Ad. Div. 14th Dec. 1886.

(*o*) *The Philadelphian*, (1900) P. 262.

(*p*) *The Gannet*, (1900) App. Cas. 234.

(*q*) *The Esk* and *The Gitana*, *supra*.

(*r*) *Culbertson* v. *Shaw*, 18 How. 584; *The Granite State*, 3 Wall. 310; *The Express*, 48 Fed. Rep. 323; *The Mischief*, 39 Fed. Rep. 510; *The Gipsy*, 19 How. 56; dist. *The Alabama*, 26 Fed. Rep. 866.

Article 11.

the ship's side (*s*), are not required to exhibit a light. But a tug fast to a boom anchored in a fairway was held in fault for having no light (*t*).

Special riding lights.

In many rivers and harbours local rules require special riding lights; those for the Thames, the Mersey, the Clyde, and the Humber, will be found in the Appendix below. So in foreign waters, as in the Suez Canal, the Elbe, and many of the Canadian rivers and harbours, special riding lights are required, and in some cases at specified heights.

The last paragraph of Art. 11 does not require steam vessels under forty tons or other craft under twenty tons to carry the "aground in or near a fairway" lights. See Art. 7.

"Aground."

A vessel dragging through mud is not "aground" within this Article (*u*).

"Fairway."

"Wherever there is an open navigable passage used by vessels proceeding up and down a river or channel, that may be said to be a fairway" (*x*). A vessel lying at a wharf in a part of an artificial channel, which dried at low water, was held not to be "aground in or near a fairway" (*y*).

Fishing boats.

The anchor lights to be exhibited by fishing vessels are dealt with in Art. 9.

Article 12.

Article 12.

Every vessel may, if necessary in order to attract attention, in addition to the lights which she is by these rules required to carry, show a flare-up light or use any detonating signal that cannot be mistaken for a distress signal.

This Article first appeared in the Regulations of 1897. It made no alteration in the law (*z*), and it was previously the practice of seamen to use the flare under the circumstances

(*s*) *The Dimitri Domskoi*, 60 Fed. Rep. 111; *alter*, where the ship projected beyond the end of the wharf: *Shields* v. *Mayor*, 18 Fed. Rep. 748.

(*t*) *The Willard Saulsbury*, cited, 1 Pars. on Ship. ed. 1869, 564.

(*u*) *The Bellanoch*, (1907) A. C. 269.

(*x*) *Per* Bruce, J., in *The Blue Bell*, (1895) P. 242, at p. 246. See *The Clutha Boat* 147, (1909) P. 36.

(*y*) *The Turquoise*, (1908) P. 148.

(*z*) See *The Simla* and *The City of Lucknow*, Ship. Gaz. 8th March 1884; *The Merchant Prince*, 10 P. D. 139; *The John Fenwick*, L. R. 3 A. & E. 500, 502; *The Lepanto*, 50 Fed. Rep. 234; *The Nessmore*, 50 Fed. Rep. 616.

mentioned. Its insertion in the regulations was probably due to a suggestion which was made in the Courts that the use of the flare was contrary to the express prohibition (Art. 1) of other lights than those mentioned in the earlier Articles. Article 12.

The "flare-up" light intended by the Article, presumably, is that in common use: and care must be taken that, if any of the modern pyrotechnic lights are used, they are such as cannot be mistaken for other lights prescribed by the regulations. The waving of a ship's lantern or globe light to attract attention might be held to be illegal.

The permissive form of the Article is peculiar. The flare "may," the other light "shall," be used. Notwithstanding the difference in wording, wilful omission to take some means to attract attention, if necessary, would, it is submitted, be negligence (*a*), though, probably, not an infringement of the regulations.

In America, under former regulations, which contained no provision for the "flare," it was held that a sailing ship was in fault for burning a flare, and leading the other vessel, which was burning blue lights for a pilot, to think that she was a pilot boat (*b*).

Article 13.

Article 13. Men-of-war's signal lights.

Nothing in these rules shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for two or more ships of war or for vessels sailing under convoy, or with the exhibition of recognition signals adopted by shipowners, which have been authorized by their respective Governments and duly registered and published.

This Article corresponds with Art. 26 of the Regulations of 1884. The provision for recognition signals first appeared in the present Article (*c*).

(*a*) American cases as to this are conflicting: *The Algiers*, 28 Fed. Rep. 240; *The Columbia*, 27 Fed. Rep. 238; *The Howard B. Peck*, 48 Fed. Rep. 334; *The Oregon*, 45 Fed. Rep. 62; *The Frank P. Lee*, 34 Fed. Rep. 480 (under the regulations).

(*b*) *The Wisconsin*, 23 Fed. Rep. 831. Cf. *The Algiers*, 38 Fed. Rep. 526.

(*c*) As to these signals, see 57 & 58 Vict. c. 60, s. 733.

Article 13.

His Majesty's ships are not bound by regulations made under the powers of the Merchant Shipping Act, 1894 (*d*); but identical regulations are issued by the Lords of the Admiralty, and the question of negligence in case of a collision between two of his Majesty's ships, or between one of them and a merchant or other ship, is substantially the same as in case of a collision between merchant ships (*e*).

In the case of a collision between a foreign man-of-war or public vessel and a merchant vessel, the foreign vessel, if she submits to the jurisdiction of the Courts of this country, is bound by the regulations (*f*).

Article 14.

Article 14. Steamship under sail.

A steam vessel proceeding under sail only, but having her funnel up, shall carry in daytime, forward, where it can best be seen, one black ball or shape two feet in diameter.

This Article first appeared in the Regulations of 1897. It appears to assume that the steam vessel is under command (*g*).

Sound Signals for Fog, &c.

Article 15.

Article 15. Fog-signals.

All signals prescribed by this Article for vessels under way shall be given :

1. *By "steam vessels" on the whistle or siren.*

2. *By "sailing vessels and vessels towed" on the fog-horn.*

The words "prolonged blast" used in this Article, shall mean a blast of from four to six seconds' duration.

A steam vessel shall be provided with an efficient whistle or siren, sounded by steam or some substitute for steam, so placed that the sound may not be intercepted by any obstruction, and with an efficient fog-horn, to be sounded by mechanical means, and also with an efficient bell (h). A sailing vessel of twenty

(*d*) 57 & 58 Vict. c. 60, s. 741.

(*e*) *H.M.S. Topaze*, 10 L. T. 659; *H.M.S. Supply*, 12 L. T. 799. But see *H.M.S. Sans Pareil*, (1900) P. 267, and *supra*, p. 59, and cases under Art. 27 at p. 458. And see Art. 1069 of the Queen's Regulations for the Navy of 1899.

(*f*) See *The Lord Byron*, Maude & Pollock on Shipping, 4th ed. 607, note (*k*); *The Newbattle*, 10 P. D. 33.

(*g*) Cf. Art. 4.

(*h*) The following note is appended :—*In all cases where the rules*

tons gross tonnage or upwards shall be provided with a similar fog-horn and bell. Article 15.

In fog, mist, falling snow, or heavy rain storms, whether by day or night, the signals described in this Article shall be used as follows, viz.:

(*a*) *A steam vessel having way upon her shall sound, at intervals of not more than two minutes, a prolonged blast.*

(*b*) *A steam vessel under way, but stopped and having no way upon her, shall sound, at intervals of not more than two minutes, two prolonged blasts, with an interval of about one second between them.*

(*c*) *A sailing vessel under way shall sound, at intervals of not more than one minute, when on the starboard tack one blast, when on the port tack two blasts in succession, and when with the wind abaft the beam three blasts in succession.*

(*d*) *A vessel, when at anchor, shall, at intervals of not more than one minute, ring the bell rapidly for about five seconds.*

(*e*) *A vessel, when towing, a vessel employed in laying or in picking up a telegraph cable, and a vessel under way, which is unable to get out of the way of an approaching vessel through being not under command, or unable to manœuvre as required by these rules shall, instead of the signals prescribed in sub-divisions (a) and (c) of this Article, at intervals of not more than two minutes, sound three blasts in succession, viz., one prolonged blast followed by two short blasts. A vessel towed may give this signal and she shall not give any other.*

Sailing vessels and boats of less than twenty tons gross tonnage shall not be obliged to give the above-mentioned signals, but if they do not, they shall make some other efficient sound signal at intervals of not more than one minute.

This Article corresponds with Art. 12 of the Regulations of 1884; it goes more into detail and is in some respects

require a bell to be used a drum may be substituted on board Turkish vessels, or a gong where such articles are used on board small sea-going vessels.

Article 15.

different from the latter. Besides verbal differences, the following points are new :—

(1.) The prolonged blast is defined to mean a blast of from four to six seconds' duration.

(2.) A steamship in tow is to use the fog-horn, whether under steam or not, and not her steam whistle or siren ; and she may, but is not obliged to, use the three blasts of paragraph (e) ; but she may not use any other signal.

(3.) A sailing vessel under twenty tons is not required to use the fog-horn.

(4.) The sound signals are to be used in heavy rain-storms.

(5.) A steam vessel under way, but not moving through the water, is required to sound two prolonged blasts with an interval of about a second between them.

(6.) A vessel at anchor is to ring her bell "rapidly for about five seconds."

(7.) The signals of paragraph (e) for vessels towing, telegraph vessels, vessels not under command, and vessels in tow are new.

With regard to the wording of paragraph (b), a vessel "under way, but stopped and having no way on her," appears to be in the same condition as the vessel described in Art. 4 as "not making way through the water." In neither Article is the case of a vessel making stern-way expressly provided for; the word "stopped" in Art. 15 (b) probably referring to the engines and not the ship. The vessel described in Art. 15 (e) as "unable to get out of the way of an approaching vessel through being not under command, or unable to manœuvre as required by these rules," is in much the same predicament as the vessel of Art. 4 which "from any accident is not under command," whether moving through the water or not. Notwithstanding the different wording of the two Articles, the intention, and, it is submitted, the reasonable construction of Art. 15 (e) is to supplement the balls and lights of Art. 4 with an equivalent sound signal to be used in thick weather.

Sound signals to be used in thick weather first received statutory sanction by the Admiralty regulations of 1st October, 1858; but beating drums, ringing bells, hammering on the anchor, and horns were in common use amongst

Article 15.

seamen long before (*i*). A direction to indicate a sailing-ship's tack by sound signal (a horn on the starboard tack and a bell on the port) was also contained in these regulations; this was omitted in the Regulations of 1863.

A ship is under way within the meaning of this Article when she is not at anchor, or fast to the shore, or aground (*k*). Therefore, a ship stationary in the water, making no way, in a flat calm, must sound her fog-horn or steam whistle, provided her anchor is not down and holding. Under the Regulations of 1863 it was held, in America, that a sailing ship hove-to in a fog, with her helm lashed nearly hard down, but with no sail aback, and forging ahead about a knot an hour, was not in fault for sounding her bell (*l*); in another American case it was held that a ship hove-to with her sails aback and stationary should sound her bell (*m*). Under the existing regulations there is no doubt that a ship hove-to in a fog must sound her horn (*n*).

"The bell" which a ship at anchor is required to ring appears to be the ship's bell. There is no provision as to its size or sound capacity.

A barque heaving up her anchor failed to sound her fog-horn directly the anchor left the ground. She was run into by a steamship going at an excessive speed. The steamship was (in America) held to be alone in fault (*o*).

It would seem that a vessel moored to a wharf or pier is not required to sound her fog-horn or bell if she is wholly out of the way of passing traffic (*p*); but if not, ordinary prudence, and perhaps Art. 15, may require her to do so (*q*). But a vessel in tow, fast to her tug, brought up for fog or other reason, has, in America, been held in fault for not sounding a fog signal (*r*). A ferry boat manœuvring to enter her slip

(*i*) The duty to use a horn was insisted upon in *The Carron*, 1 Sp. 91; and the other signals are mentioned in a pleading of 1669.

(*k*) See *supra*, p. 333.

(*l*) *The Pennsylvania*, 23 L. T. 55. And see 19 Wall. 125.

(*m*) *The Alfredo*, 32 Fed. Rep. 240.

(*n*) So held in *Burrows* v. *Gower*, 119 Fed. Rep. 616.

(*o*) *The Obdam*, 60 Fed. Rep. 637.

(*p*) *The Express*, 48 Fed. Rep. 323; *The Albany*, 91 Fed. Rep. 805; *The J. H. Rutter*, 35 Fed. Rep. 365; and see *supra*, p. 362.

(*q*) See *The Kennebec*, 108 Fed. Rep. 300, but cf. *The Titan*, 10 Asp. M. C. 350.

(*r*) *The Raleigh* and *The Niagara*, 44 Fed. Rep. 781. Cf. *The City of Alexandria*, 31 Fed. Rep. 427; *Ludwig* v. *Holberg*, 36 Fed. Rep. 914.

Article 15.

in New York harbour, within the line of the piers, was held not to be in fault for not sounding fog signals (*s*).

By local rules in force in different waters ships are required to sound their horns at various intervals. In America it has been held gross negligence in a steamship not to be fitted with a whistle (*t*).

What is fog?

What amount, or density, of fog must exist so as to make the use of the fog signals necessary, has not been decided by the Courts of this country. A definition arrived at by an American Court is probably sufficiently accurate. It was there said that, to give the Article a reasonable meaning, we must suppose that its intent is to give to approaching vessels a warning of which the fog would otherwise deprive them, and that it applies where there is fog enough to shut out the view of the sails, or hull, by day, or of the lights by night, until the vessels are so close that there would be risk of collision (*u*).

Where a vessel is in the neighbourhood of a fog bank, or has reason to think that there may be other vessels near her enveloped in fog, the fog signals should be sounded, though she herself is not in a fog (*x*). This is a reasonable precaution, but it does not appear to be expressly directed by the regulations, and the omission to do so would probably not be held to be an infringement of the regulations (*y*).

A vessel using a mouth-horn, and not provided with a mechanical fog-horn, was held in fault under 36 & 37 Vict. c. 85, s. 17 (*z*). Where, however, an efficient mechanical fog-horn is provided, but fails to work from reasons other than the negligence of the owners or their servants, the use of a mouth-horn will be held to be a "necessary departure" from the regulation within s. 419 (4) of the Merchant Shipping Act, 1894 (*a*).

(*s*) *The Princeton*, 61 Fed. Rep. 116.

(*t*) *The Electra*, 1 Bened. 282.

(*u*) *The Monticello*, Dist. Ct. of Mass. U.S.; 1 Parsons on Shipp. 566 (ed. 1869).

(*x*) *The Milanese*, 4 Asp. M. C. 318. Cf. *The Bernard Hall*, 71 L. J. Ad. 72; *The Perkiomen*, 27 Fed. Rep. 573.

(*y*) *The N. Strong*, (1892) P. 105; affirmed in regard to snow squalls, *The St. Paul*, (1909) P. 43.

(*z*) *The Love Bird*, 6 P. D. 80. Cf. *The Energy*, 42 Fed. Rep. 301; *The Catalonia*, 43 Fed. Rep. 396; *The Bolivia*, 49 Fed. Rep. 169; *The Niagara*, 84 Fed. Rep. 902.

(*a*) *The Chilian*, 4 Asp. M. C. 473; *The Cooper*, Victorian L. R. xxix. 874.

Article 15.

Art. 15 does not in terms require the fog-horn to be sounded by mechanical means. Some mechanical horns are capable of being sounded by mouth, and there is reason to think that they are sometimes so used. If it were proved that the horn had been blown by mouth, and not by the bellows or piston, when the ships were at such a distance apart that the horn might have been heard earlier if it had been sounded by the mechanism, the ship on board of which it was blown by mouth would probably be held in fault for the collision.

It appears to be the custom of Nova Scotia fishermen to sound a fog-horn when at anchor. Such a practice is illegal, and may mislead other ships and cause them to get ashore (*b*).

The question has been raised whether a steamship at anchor is justified in sounding her whistle under any circumstances. In certain states of the atmosphere an approaching vessel may sometimes be seen from the deck of another to which the latter is herself invisible; and a violent blast of the steam whistle or siren might attract attention, when the ship's bell had not been heard. Under such exceptional circumstances, a blast of the whistle would probably be held to be justified by Art. 27.

Whether all or only the last of several craft in tow should sound the fog signal allowed by Art. 15 has been much discussed in America (*c*). The point has not arisen in this country.

It is the duty of a sailing ship when going about in a fog to make the signals for the tack she is on when she begins to go about, and not to change the signal until she gets the wind on the other side (*d*).

The Thames rules differ from Art. 15 in not requiring the mechanical fog-horn (*e*).

Proof that a fog-horn was blown at proper intervals on board ship A. will not always raise a presumption of negligence on the part of those on board ship B., who swear that

(*b*) See *The Barcelona*, 10 Quebec L. R. 305, and *The Battler*, 62 Fed. Rep. 612.

(*c*) *The Harold*, 84 Fed. Rep. 698; *The Raleigh*, 44 Fed. Rep. 781; *The Whitney*, 77 Fed. Rep. 1001.

(*d*) *The Constancia*, 6 Asp. M. C. 178.

(*e*) See *infra*, p. 531.

Article 15. they were listening and heard no fog-horn. Nor will such evidence on the part of B. necessarily prove that no horn was blown by A. (*f*).

The fog signals required to be made by fishing vessels are dealt with under Art. 9, *supra*, p. 355.

Speed of Ships to be moderate in Fog, &c.

ARTICLE 16.

Article 16. Speed in fog.

Every vessel shall, in a fog, mist, falling snow, or heavy rain-storms, go at a moderate speed, having careful regard to the existing circumstances and conditions.

A steam vessel hearing, apparently forward of her beam, the fog signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over (*g*).

This Article corresponds with Art. 13 of the Regulations of 1884. The words "heavy rain-storms," and the qualification "having careful regard to the existing circumstances and conditions," and the whole of the paragraph as to the conduct of a steam vessel "hearing" a fog signal of a vessel forward of her beam, are new. This Article demands the careful attention of seamen, as a failure to stop the engines under the circumstances mentioned will bring the vessel within the terms of 57 & 58 Vict. c. 419, and almost certainly cause her to be held in fault in case of collision.

Art. 16 is to be construed in conjunction with Art. 23, and where the latter Article requires the engines to be stopped and reversed, Art. 16 does not justify a breach of Art. 23 (*h*). It is submitted, however, that where vessels are not in sight of one another by reason of fog, a vessel will only be held at fault under Art. 23 and other steering and sailing rules in

(*f*) See *supra*, p. 35.

(*g*) As to the application of this to a tug with a ship in tow, see *The Lord Bangor*, (1896) P. 28.

(*h*) *The Merthyr*, 8 Asp. M. C. 475.

Article 16.

cases where she has clear indications of the other vessel's position and probable course (*i*).

It would seem that Art. 16 does not apply to a steamship lying dead in the water, with her engines stopped. It neither requires nor forbids her to move her engines ahead or astern (*k*). Whether a heavy steamship in the track of vessels is justified in placing herself in so helpless a condition without reasonable cause is doubtful. Art. 15 (b) (*l*) requires her to sound a special signal under such circumstances. It is submitted that a sailing ship is justified in heaving-to for safety in a fog (*m*); but she must be in readiness to do what she can to clear another vessel suddenly coming into sight.

Excessive speed is negligence.

Apart from the regulations, the law requires a ship to be navigated in or near a fog at a moderate speed (*n*); the regulations make no alteration in the law in this respect. But the effect of an infringement of them, combined with the operation of 57 & 58 Vict. c. 60, s. 419, must not be overlooked. A ship navigating at an improper rate of speed in thick weather would almost inevitably be held guilty of negligence contributing to the collision; and, under the existing law, without reference to the question whether the rate of speed was a cause of the collision (*o*).

Vessels approaching a bank of fog (*p*) or snow (*q*), which they are about to enter, should, as a matter of seamanship, go at a moderate speed. Failure to comply with this duty does not, however, amount to a breach of Art. 16 (*r*). The fact there is a fog bank bearing upon her bow, which she is not about to enter, does not impose upon a steamship a duty to go at a moderate speed (*s*).

It was said of Art. 13 of the Regulations of 1884, which dealt with the speed of ships in fog, that it was impossible to break that Article without also breaking Art. 18 of those

(*i*) See *Crawford and Another* v. *Granite City S.S. Co.*, Sc. L. Rep. xliii. 732; see also *infra*, p. 380.

(*k*) *The Earl of Dumfries* and *The Boskenna Bay*, 5 Asp. M. C. 329, n.

(*l*) *Supra*, p. 367.

(*m*) See *The Attila*, 5 Quebec L. R. 340.

(*n*) See *The Juliet Erskine*, 6 Not. of Cas. 633; *The Lord Saumarez*, *ibid.* 600; *The Milanese*, 4 Asp. M. C. 438; *The N. Strong*, (1892) P. 105.

(*o*) As to the effect of improper speed under the old law, see *The Lord Saumarez*, 6 Not. of Cas. 600.

(*p*) *The N. Strong*, (1892) P. 105.

(*q*) *The St. Paul*, (1909) P. 43.

(*r*) *The N. Strong*, *supra*; see also *The Oravia*, 10 Asp. M. C. 436.

(*s*) *The Bernard Hall*, 9 Asp. M. C. 300.

Article 16.

regulations, which imposed upon both ships, when approaching with risk of collision, a duty to stop and reverse if necessary (*t*). It is submitted that this will not hold good as to the present Arts. 16 and 23, which correspond with the old Articles.

What is "moderate" speed.

"Moderate" speed is a relative term. It cannot be defined so as to apply to all cases; what it should be in each case depends on the circumstances of the particular case; and the terms of Art. 16 recognize this fact. It may be stated as a general rule that speed such that another vessel cannot be seen in time to avoid her is unlawful. "I think the rule of law with regard to travelling at sea is identical with the law of travelling on the high road. No one on a dark night has a right to go at such a rate of speed as not to be able to escape an accident, if he happens to follow immediately in the wake of another, whether it be by sea or land" (*u*). Speed which is justifiable in an unfrequented part of the ocean is unlawful, and even criminal, in a crowded roadstead or fairway (*x*); and speed that would be moderate for a handy paddle-wheel tug may be highly improper for a low-powered, heavy, screw steamship (*y*). A vessel's power of stopping is also relevant in considering her speed in fog (*z*).

In the case of *The Europa*, it was said by the Privy Council: "This may be safely laid down as a rule on all occasions, fog or clear, light or dark, that no steamer has a right to navigate at such a rate that it is impossible for her to prevent damage, taking all precaution at the moment she sees danger to be possible; and if she cannot do that without going less than five knots an hour, then she is bound to go at less than five knots an hour" (*a*).

The Campania, a twin-screw ocean liner of 12,950 tons,

(*t*) *Per* Lord Esher, M. R., 11 P. D. 25.

(*u*) *Per* Lush, J., *The City of Brooklyn*, 1 P. D. 276; *The Smyrna*, 2 Moo. P. C. N. S. 435; *The Zadok*, 9 P. D. 114; *The Attila*, 5 Quebec L. R. 340; *The Oregon*, 27 Fed. Rep. 751.

(*x*) *The Europa*, 14 Jur. 627; *The Dordogne*, 10 P. D. 6.

(*y*) See *The Elysia*, 4 Asp. M. C. 540.

(*z*) *The Oceanic*, 9 Asp. M. C. 378; *The Campania*, (1901) P. 289.

(*a*) The passage in the text is cited from *The Pennsylvania*, 31 L. T. 103; 19 Wall. 125, 134. In the Court below the case is reported 14 Jur. 627; and in Pritch. Ad. Dig. the date of the hearing before the Privy Council is given as 6th Dec. 1851; but the decision of the Privy Council does not appear to be reported in the books.

Article 16.

with a full speed of twenty-one knots, was going in the daytime, in a dense fog, twenty-six miles N.E. of the Tuskar, between nine and ten knots. The fog was so dense that another ship could not be seen more than 600 feet off. All the authorities were reviewed by Gorell Barnes, J., and he held that *The Campania* was not going at a moderate speed, and had infringed Art. 16. His decision was affirmed by the Court of Appeal (*b*).

A rate of speed which is "moderate" for vessels in the open sea, and out of anchorage ground, would not necessarily be "moderate" for a vessel navigating with a fair tide in a river or roadstead, where vessels are likely to be brought up. As regards danger to vessels at anchor, the speed of the other ship over the ground, and not through the water, is that which must be considered; and in such cases the strength and direction of the tide must be taken into account. As regards danger to vessels under way the tide is immaterial.

The object of Art. 16 is, not merely that vessels should go at a speed which will lessen the violence of a collision, but also that they should go at a speed which will give as much time as possible for avoiding a collision when another ship suddenly comes into view at a short distance (*c*).

Although it is not possible to state definitely, in knots, what is "moderate" speed for a steamship or for a sailing ship, a long series of decisions has reduced the question within narrow limits. In either case it must depend upon circumstances, which vary with every case. With regard to steamships, the conditions of the atmosphere, wind, and weather, the size, weight and handiness of the vessel, her available steam and engine power, her equipment of single or double propellers or paddle wheels (*d*), her steerage power, whether by hand or steam, and lastly, the locality and the probability of falling in with other ships, are amongst the most important matters to be considered. The following cases indicate the tendency of modern decisions; but each case has to be considered with reference to its own circumstances, and no one

(*b*) (1901) P. 289.

(*c*) See *per* Sir J. Hannen, *The Zadok*, 9 P. D. 114, 115.

(*d*) The importance of the power to stop the ship's way was insisted on in *The State of Alabama*, 17 Fed. Rep. 847. *The Michigan*, 63 Fed. Rep. 280.

Article 16.

case can be relied upon as binding in any other. Seven knots an hour was held by the Privy Council to be too high a rate of speed for an ocean steamship in a fog in the track of ships 200 miles to the eastward of Sandy Hook (*e*) ; and even four knots has been held too fast for a steamship in the sea in a fog so dense that another ship could not be seen seventy yards off (*f*). In the Clyde six or seven knots over the ground was held too much for a steamer in a thick fog (*g*). Off Cromer, with a whistle sounding ahead, three-and-a-half knots (*h*), in the sea ten miles off Ushant four knots (*i*), in the Horse Channel, at the entrance to the Mersey, on a dark night ten knots (*k*), for a liner off the Tuskar six-and-a-third knots (*l*), and in Gibraltar Straits on a course crossing the traffic five knots (*m*), have been held too fast. In America four knots in a frequented part of the Atlantic, off the American coast, with a bad look-out, was held too much (*n*) ; but for a small steamship and for a schooner off Cape Cod, four or five was held to be moderate (*o*). The wholly unjustifiable rate of fifteen knots has been repeatedly condemned (*p*) ; six (*q*), seven (*r*), eight (*s*), nine (*t*), ten (*u*), and twelve (*v*) have been held to be too fast. On the other hand, where the steam power was such that the ship could be brought to a standstill in two of her own lengths, five or six knots (*x*), and in Gibraltar Straits two-and-a-half knots (*y*), was held to

(*e*) *The Pennsylvania*, 23 L. T. 55. See also *The Ching Kiang*, (1908) A. C. 251, and *The City of Brooklyn*, 1 P. D. 276.

(*f*) *The Magna Charta*, 1 Asp. M. C. 153.

(*g*) *Little* v. *Burns*, *The Owl* and *The Ariadne*, 9 Ct. of Sess. Cas. 4th ser. 118.

(*h*) *The Ebor*, 11 P. D. 25.

(*i*) *The Dordogne*, 10 P. D. 6.

(*k*) *The Despatch*, Swab. 138.

(*l*) *The Oceanic*, 9 Asp. 378.

(*m*) *The Resolution*, 6 Asp. M. C. 363.

(*n*) *The Pottsville*, 12 Fed. Rep. 631.

(*o*) *The Lorenzo D. Baker*, 24 Fed. Rep. 814 ; *The Mount Hope*, 84 Fed. Rep. 910.

(*p*) *The Britannie*, 39 Fed. Rep. 395 ; *The Trave*, 68 Fed. Rep. 390 ; *The Saale*, 63 Fed. Rep. 478 ; *The Rhode Island*, 17 Fed. Rep. 554 ; *The Umbria*, 166 U. S. Rep. 404.

(*q*) For a schooner, *The Harold*, 84 Fed. Rep. 698 ; a tug and tow in strong tide, *The H. F. Dimock*, 77 Fed. Rep. 226 ; *In re Clyde S.S. Co.*, 134 Fed. 95.

(*r*) *The Winooski*, 162 Fed. 64.

(*s*) *The Charlotte Webb*, 43 Fed. Rep. 151 ; *The Vesper*, 9 Fed. Rep. 569 ; *The Patria*, 92 Fed. Rep. 411 ; *The Cheruskia*, 92 Fed. Rep. 683.

(*t*) *The Alberta*, 23 Fed. Rep. 807.

(*u*) *The Peshtigo*, 25 Fed. Rep. 488 ; *The City of New York*, 35 Fed. Rep. 604 ; *The Catalonia*, 43 Fed. Rep. 396 ; *The Bourgogne*, 139 Fed. 434.

(*v*) *The Pennland*, 23 Fed. Rep. 551.

(*x*) *The Michigan*, 63 Fed. Rep. 280.

(*u*) *The Resolution*, *ubi supra*.

Article 16.

be moderate; and where the ships were visible to each other from a half to a third of a mile apart, seven knots (in a snowstorm) was held not to be too fast (*z*). In another American case of two loaded steamships of about 2,000 tons burden, seven-and-a-half knots was held too fast for the one, and four-and-a-half not too much for the other (*a*), and in a river four-and-three-quarters with the tide was held to be moderate, whilst five-and-a-third against the tide was excessive (*b*). The stringency of the law as to speed is illustrated by a case where a steamship, hearing, as she thought, cries of distress from a ship astern, turned round and made for the cries at a speed of seven knots. Notwithstanding the praiseworthiness of her motive in hurrying to assist the other vessel, she was held in fault for a collision with her that followed (*c*).

It has been held in America that it is not enough to slacken until the speed is such as would enable the steamship to avoid another vessel which is sounding her fog-horn (*d*). And from the English decisions it appears that the rate must be regulated by the thickness of the fog, and the probability of falling in with other ships, rather than by the supposed distance at which a horn or bell would be audible.

Excuses for too great speed.

It is no excuse for excessive speed that the ship is carrying mails, and under contract to deliver them by a certain date (*e*); or that it was desirable in order to get out of the fog (*f*). A steamship entering a fog bank at a speed of eight knots was held in fault (*g*).

It is a common excuse that the ship was going as slowly as she could; that she would not steer, or that her engines would not turn over, if she had tried to go slower. The answer to this was given by Sir James Hannen: he said that if a steamship is so constructed that she cannot go at a moderate speed, she navigates at her own risk (*h*). And Butt, J., said,

(*z*) *The Allianca*, 39 Fed. Rep. 476.
(*a*) *The Lepanto*, 21 Fed. Rep. 651.
(*b*) *The Luray*, 24 Fed. Rep. 751.
(*c*) *The Nacoochee*, 28 Fed. Rep. 462.
(*d*) *The Hansa*, 5 Beued. 501; but see *The Michigan*, 63 Fed. Rep. 280, 478.
(*e*) *The Vivid*, Swab. 88; 10 Moo. P. C. 472; *The Northern Indiana*, 3 Blatchf. 92.
(*f*) *The Hansa*, 5 Beued. 501, 521; *The Chancellor*, 1 Beued. 153, 164.
(*g*) *The Harton*, 9 P. D. 44.
(*h*) *The Irrawaddy*, Ad. Div. 15th June, 1887; followed in *The Campania*, (1901) P. 289.

Article 16.

in another case (*i*), that it was the duty of a steamer in such circumstances to occasionally stop her engines. Inability to steer under moderate speed is not a special circumstance within the meaning of Art. 27 which will justify a departure from Art. 16 (*k*).

Duty of steamship in fog.

The duty of a steamship in a fog in relation to another ship, whose whistle she hears, formerly governed by Art. 18 of the Regulations of 1884, has now to be considered under Art. 16. The duty of a steamship to "stop her engines" under the article has frequently been insisted upon. One of the reasons given for a firm insistence on this obligation is that the stopping of the engines gives a better opportunity of hearing the other vessel's fog-horn or whistle (*l*), and so of ascertaining her whereabouts, always a matter of extreme difficulty by reason of the capricious way in which sound is conveyed in fog (*m*). Most of the cases, which have dealt with this duty, have turned on the point, whether the vessel, which has omitted to stop, can establish either that the position of the other vessel was ascertained, or that the circumstances did not admit of stopping. Such contentions have usually failed (*n*). Thus a steamship will not be held justified in not stopping for a fog signal forward of her beam because another vessel is sounding a fog signal some distance away four points on her port quarter (*o*), nor because she has a cargo of dynamite stowed aft which might render her stopping dangerous to other vessels (*p*). Nor will the fact that a tug has a vessel in tow of itself excuse non-compliance with a duty to stop (*q*).

The position of a vessel will not be regarded as ascertained

(*i*) *The Resolution*, 6 Asp. M. C. 363; see also *per* Hannen, P., in *The Rosetta*, *ibid.* 310; Gorell Barnes, J., *The Germanic*, Ad. Ct. Feb. 1896.

(*k*) *The H. F. Dimock*, 77 Fed. Rep. 226. Cf. *The Cincinnati*, 95 Fed. Rep. 302.

(*l*) *The Rondane*, 9 Asp. M. C. 106; *The Koning Willem I.*, (1903) P. 114. Whether this is so in view of the noise made by blowing off steam may be questioned.

(*m*) See *The Ching Kiang*, (1908) A. C. 251, at p. 259, and *The Koning Willem I.*, *supra*. See also *The Rosetta*, 6 Asp. M. C. 310.

(*n*) For duty to stop on hearing whistle or hailing apart from the present Art., see *The Frankland* and *The Kestrel*, L. R. 4 P. C. 529; *The Kirby Hall*, 8 P. D. 71; *The Dordogne*, 10 P. D. 6; and see *The Teutonia*, 23 Wall. 77, and *The Admiral Schley*, 142 Fed. 64.

(*o*) *The Britannia*, (1905) P. 98.

(*p*) *The Star of New Zealand*, Ship. Gaz. Nov. 7th, 1899.

(*q*) *The Challenge* and *The Duc d'Aumale*, (1905) P. 198; *The Lord Bangor*, (1896) P. 28, distinguished.

Article 16.

by a steamship under a duty to stop and navigate with caution, apart from such ascertainment, merely because the vessel seems to be far away. "If this Court were to hold that upon hearing a whistle which sounded to be distant a vessel was justified in not stopping, although its position was not ascertained, except that it sounded a long way off, every case in this Court would be that the whistle sounded such a long way off that the ship was justified in not stopping" (*r*). The position of a vessel will only be regarded as ascertained when the fog signals place the matter beyond reasonable doubt. A question put to the Elder Brethren in the case of *The Aras* (*s*) illustrates what amounts to ascertainment. "Were the indications such as to show her master, distinctly and unequivocally, that if both vessels continued to do what they appeared to be doing they would pass clear without risk of collision?" (*t*). A steamship has been held liable for not stopping when she heard a fog signal proceeding from a fog bank on her port bow, which she herself was not about to enter (*u*). A steamship is not justified in maintaining her speed in order the better to ascertain the position of a vessel whose fog signal has been heard once apparently far off (*x*).

On the other hand a vessel proceeding down the Manchester Ship Canal was held excused for not stopping on hearing a fog signal forward of her beam, on the ground that the position of vessels ahead of her in the canal, which were presumably on their proper side of the canal, was ascertained. It was also apparently considered in this case that the "circumstances of the case" did not reasonably "admit" of her stopping (*y*).

The case of *The Oravia* (*z*) may be regarded as throwing some light on the steamship's duty to "stop." Here *The Nereus* saw *The Oravia* at a distance of about three miles in a position to pass her all clear port side to port side. As the vessels proceeded a fog bank intervened. On entering the bank

(*r*) *The Britannia*, (1905) P. 98, at p. 104, *per* Gorell Barnes, J.
(*s*) *The Aras*, (1907) P. 28.
(*t*) *Ibid.* at p. 34.
(*u*) *The Bernard Hall*, 9 Asp. M. C. 300.
(*x*) *The Koning Willem I.*, (1903) P. 114.
(*y*) *The Hare*, (1904) P. 331.
(*z*) *The Oravia*, 10 Asp. M. C. 525. See also *The Geelong*, Ship. Gaz. March 5th, 1908, where an overtaken ship was held to have ascertained the position of a vessel which passed from her quarter on to her bow.

Article 16.

The Nereus, which had been making about eight knots, put her engines to slow. On hearing a port helm signal from *The Oravia* she ported without stopping. She was held justified in her manœuvre, as the position of *The Oravia* was known to her. It is submitted that had *The Nereus*, in the circumstances, heard a fog signal from *The Oravia* instead of the port helm signal, she would still have been justified in not stopping, the position of the other vessel having been ascertained within the Article. What will amount to "navigating with caution" within the Article must necessarily depend on the circumstances of each case. In some circumstances the proper course of a vessel, which has stopped on hearing the first fog signal forward of her beam, will be to continue at slow speed, stopping her engines from time to time (*a*). In certain circumstances the alteration of helm in a fog by a steamship hearing the whistle of another vessel forward of her beam may not be an improper manœuvre (*b*). Such manœuvre cannot, however, relieve a vessel of the duty to "stop" under this Article.

In a fog so dense that it is not possible for a ship to see others in time to avoid them, she is not justified in being under way at all, except from necessity. Neither Art. 16 nor Art. 23 justifies her in being under way under such circumstances (*c*).

An inward-bound ocean steamship of 2,435 tons register was overtaken near the North-West Lightship in Liverpool Bay by a very dense fog. She lay with her engines stopped driving stern foremost in an E.S.E. direction towards Liverpool with the flood tide. It was held that she was not in fault for not having brought up (*d*). In an American case (*e*) it was held that a steamship in a fog was in fault for bringing

(*a*) *The Aras*, (1907) P. 98; *The Byron*, Ship. Gaz. 9th Feb. 1905.

(*b*) See *The Castleventry*, Ship. Gaz. 16th April, 1904, in which case a vessel was held justified in porting to avoid a vessel from which a signal of two prolonged blasts had been heard, apparently forward of her beam. See also p. 373, *supra*, and *The Vindomora*, 14 P. D. 172; (1891) App. Cas. 1; *The Umbria*, 166 U. S. Rep. 404. But see *The Resolution*, 6 Asp. M. C. 363.

(*c*) *The Lancashire*, L. R. 4 A. & E. 198; *The Otter*, *ibid.* 203; *The Girolamo*, 3 Hag. Ad. 169; *The North American* and *The Wild Rose*, 2 Mar. L. C. O. S. 319; *Smith* v. *St. Lawrence Tow Boat Co.*, L. R. 5 P. C. 308; *The Victoria*, 3 W. Rob. 49; *The Perth*, 3 Hagg. 414; and see cases cited *supra*, pp. 236, 373.

(*d*) *The Kirby Hall*, 8 P. D. 71.

(*e*) *The Ailsa*, 76 Fed. Rep. 868.

up in the track of ships, when she might have got into anchorage ground. Article 16.

The duty of a steamship under way in a fog has been thus stated by the Supreme Court of the United States:— "The best precautions are bright signal lights; very low speed—just sufficient to subject the vessel to the command of her helm; competent look-outs properly stationed and vigilant in the performance of their duties; constant ringing of the bell or blowing of the fog-horn, as the case may be; and sufficient force at the wheel to effect, if necessary, a prompt change in the course of the vessel" (*f*).

Pressure of steam when going slow.

It has been said in an American case that the meaning of the rule that a steamship shall in a fog go at a moderate speed is, not that she shall only have such a pressure of steam as will enable her to go slow, but that she shall have her full steam power, and still go slow, so that she may be able to bring herself to a standstill as soon as possible (*g*). In another case, it was said that in a dense fog a ship is bound to go as slowly as possible, consistently with steerage way (*h*). Though not bound to lie-to (*i*), a sailing ship must put herself under moderate sail in a fog and use extra caution (*k*). A schooner carrying on at night, and racing with another vessel, was held in fault (*l*).

Speed of sailing ships in a fog.

The words of Art. 16 as to stopping engines cannot apply to sailing ships (*m*); but undue speed is forbidden by that Article both for sailing ships and for steamships. Where a sailing ship had her studding sails set in a thick fog and came into collision with another ship, Dr. Lushington said: "It is unquestionably the duty of a master in intense fog to exercise the utmost vigilance, and to put his vessel under command, so as to secure the best chance of avoiding all accidents, even though such precautions may occasion some delay in the prosecution of the voyage" (*n*). But in this, and

(*f*) *The Colorado*, 1 Otto, 692. Cf. *The Franconia*, 4 Beued. 181.

(*g*) *The Hansa*, 5 Beued. 501.

(*h*) *The Westphalia*, 4 Beued. 404.

(*i*) *The Morning Light*, 2 Wall. 550; *The Colorado*, 1 Otto, 692.

(*k*) *The Colorado*, 1 Otto, 692.

(*l*) *The Thomas Martin*, 3 Blatchf. 517.

(*m*) *The Dordogne*, 10 P. D. 6, 12.

(*n*) *The Itinerant*, 2 W. Rob. 236. In *The Vesper*, 9 Fed Rep. 569, a sailing ship going eight knots was held in fault for excessive speed.

Article 16. in another case (*o*), the sailing ship, though under a press of sail in a fog, was not therefore held in fault for the collision. So a brig in the Atlantic carrying all plain sail and going five knots (*p*), a large loaded ship in the Channel track off Folkestone going five knots (*q*), and a barque off the Land's End going four knots in a fog (*r*), were held free from blame (*p*).

In *The Zadok* (*s*), a barque with nearly all the canvas set which she could carry, going five knots or upwards in a fog in a frequented part of the English Channel, was held in fault for not going at a moderate speed. In the same case Sir J. Hannen said that it is the duty of a sailing ship in a fog, where she cannot see her way, to moderate her speed to the point at which she has just way sufficient to have the power of controlling her movements. A similar rule has been laid down (*obiter*) in the Court of Appeal (*t*).

A sailing ship going six-and-a-half knots over a fishing ground on a dark night, when vessels were visible only 100 or 200 yards off, was held in fault (*u*); also a sailing ship going five or six knots up Swin on a dark and cloudy night (*x*).

A schooner at night in a dense fog in the Bristol Channel was held in fault for not going at a moderate speed. It does not appear what her speed was; but she had all plain sail set, and it was held that she was going faster than was necessary "to keep her under command" (*y*). It is submitted that the decisions as to what is "moderate" for small sailing ships bear heavily upon such vessels, and that they should not be carried any further. A small coaster with all plain sail set, sailing by the wind, is seldom going more than four or five knots, and it may be doubted whether she would be less likely to do damage if she shortened sail (*z*).

(*o*) *The Ebenezer*, *ibid.* 206.
(*p*) *The Elysia*, 4 Asp. M. C. 540.
(*q*) *The Milanese*, 4 Asp. M. C. 318; reversed on another point.
(*r*) *The N. Strong*, (1892) P. 105.
(*s*) 9 P. D. 114. Cf. *The Wyanoke*, 40 Fed. Rep. 702 (six knots); *The Chattahoochee*, 173 U. S. Rep. 540 (six or seven knots outside Nantucket shoals near the track of Atlantic liners).
(*t*) *The Dordogne*, 10 P. D. 6, 12.
(*u*) *The Pepperell*, Swab. 12. Cf. *The Frank*, 2 Quebec L. R. 295, a barque on the banks of Newfoundland.
(*x*) *The Victoria*, 3 W. Rob. 49.
(*y*) *The Beta*, 9 P. D. 134.
(*z*) Cf. *The N. Strong*, (1892) P. 105; *The Martello*, 39 Fed. Rep. 505 (four knots not excessive).

Article 16

It has been said that where a sailing ship in a fog is aware of the proximity of another vessel, though unable to see her, it is the duty of the person in charge to order his people to stand by the sheets and braces, in order to manœuvre the sails, and assist the helm, at the first moment the other ship is seen (*a*).

Art. 16 overrides the steering and sailing rules.

Article 16 overrides the steering and sailing rules (Arts. 17 *seq.*); and a steamship that under those rules has the right of way cannot, in case of collision, justify a departure from Art. 16 upon the ground that she kept her course and speed (*b*). This probably is the meaning of the saying in an American case that in a fog so dense that the course of the other ship cannot be made out the steering and sailing rules do not apply (*c*).

Inevitable accident: speed excessive.

A vessel going at too great a rate of speed on a dark night, or in thick weather, cannot be heard to say that a collision was the result of inevitable accident (*d*).

Local rules as to speed.

In some rivers the speed of ships is limited by local rules, which apply in all weathers, thick or clear.

Steamship's smoke obscuring lights and view.

If a steamship has the wind aft, so that her own smoke is blown ahead, obscuring the lights or the view from her deck, it is her duty to go at a moderate speed, and so that she may see and be seen by other vessels in time to avoid collision (*e*).

The duty of a steamship approaching another vessel with risk of collision, to slacken her speed, or to stop and reverse, is considered below (Art. 23).

Steamship lying dead.

The case of a steamship lying dead in the water in a thick fog, and hearing the whistle or horn of an approaching vessel, is not provided for by the regulations. Art. 16 does not, it is submitted, require her to "go at a moderate speed"; nor, on the other hand, does Art. 23 require her not to move her engines. The prudent course appears to be for her to set her engines ahead and so to gather slight headway (*f*).

(*a*) See *The Zadok*, 9 P. D. 114, 117.

(*b*) *The Cathcy*, 9 Asp. M. C. 35.

(*c*) *The Grenadier* and *The August Korff*, 74 Fed. Rep. 971.

(*d*) *The Juliet Erskine*, 6 Not. of Cas. 633.

(*e*) *The Rona* and *The Ava*, 2 Asp. M. C. 182; *The Vivid*, 7 Not. of Cas. 127.

(*f*) *The Earl of Dumfries* and *The Boskenna Bay*, 5 Asp. M. C. 329, n.

Article 16.

Sailing ship hove-to.

It is submitted that a sailing ship would not be held in fault for heaving-to for safety in a fog (*g*).

Being under way in fog unnecessarily.

In very thick weather, or great darkness, a vessel is not justified in running through a crowded roadstead, but should, if possible, bring up (*h*). Nor is she justified in the Thames in leaving a wharf in a dense fog for the purpose of going up the river on a flood tide; and it has been said that the proper way to go up, under such circumstances, is stern first, dredging with the anchor on the ground, so as to be able to bring up at a moment's notice (*i*). In a dense fog in New York harbour a steamship ran into another vessel lying at a wharf, by reason of her compass being out of order. She was held to be in fault (*k*).

Ferry boats running in a fog.

The Lancashire was a Liverpool and Birkenhead ferry steamer. She left her landing-stage to cross the Mersey in a dense fog, and ran into *The Levant*, a vessel brought up in her track. It was contended for *The Lancashire* that it was the custom of the ferry boats to run in all weathers, and that it was necessary for the convenience of the public that they should do so. *The Lancashire* was held in fault for the collision, on the ground that she had no right to be under way at all in such weather (*l*).

American cases as to ferry boats running in a fog.

The law in America as to ferry steamers being under way in a fog seems to be more favourable to the ferry boats than that of this country, as laid down in *The Lancashire*. In *The Exchange* (*m*), it was held that while owners of ferry boats have not any exclusive privileges of navigation over owners of other vessels, nevertheless, since public convenience requires the ferry boats to be running as constantly as possible, the rules which are applicable to the running of such a boat are, that while more than ordinary care, vigilance, and caution are required on the part of the ferry boat, she is entitled to more than ordinary diligence on the part of other vessels to

(*g*) See *The Attila*, 5 Quebec L. R. 340.

(*h*) *The Victoria*, 3 W. Rob. 49; *The George*, 4 Not. of Cas. 161; *The Lochlibo*, 7 Moo. P. C. 427.

(*i*) *The Aguadillana*, 6 Asp. M. C. 390.

(*k*) *The Mohawk*, 42 Fed. Rep. 189.

(*l*) *The Lancashire*, L. R. 4 A. & E. 198.

(*m*) 10 Blatchf. 168. See also *Hoffman* v. *Union Ferry of Brooklyn*, 68 N. York Rep 385; *Briggs* v. *The Whitehall*, 68 Fed. Rep. 1022; *The Orange*, 46 Fed. Rep. 408.

avoid her. And the cases show that where, as in the strong tides of New York harbour, it is necessary for them to run at a speed of four or five knots, in order to be under command, they will not be held in fault for excessive speed (*n*). Article 16.

In another case (*o*), it was held that a ferry boat is not bound to stop running in a dense fog. There are other American cases to the effect that vessels are required to know the usual track of ferry boats, and to take precautions accordingly, and particularly not to anchor in their track (*p*).

Steering and Sailing Rules.

Preliminary—Risk of Collision.

Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist.

Article 17. Article 17.

Two sailing ships.

When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, viz.:—

(a) *A vessel which is running free shall keep out of the way of a vessel which is close-hauled.*

(b) *A vessel which is close-hauled on the port tack shall keep out of the way of a vessel which is close-hauled on the starboard tack.*

(c) *When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.*

(d) *When both are running free, with the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward.*

(e) *A vessel which has the wind aft shall keep out of the way of the other vessel.*

This Article corresponds with Art. 14 of the Regulations of 1884. The preliminary paragraph, as to risk of collision,

(*n*) *The Ophelia*, 44 Fed. Rep. 941.
(*o*) *The Lydia*, 11 Blatchf. 415.
(*p*) *The Hudson*, 5 Bened. 206; *The Relief*, Olcott, 101.

Article 17.

first appeared in the present paragraph. If construed literally, it would seem to make the regulations applicable when the ships are at any distance apart. Perhaps it will be construed as a mere warning to seamen to take an obvious method of ascertaining, as early as possible, the approximate course of the other ship (*q*). See further as to "risk of collision," *supra*, p. 323.

The steering and sailing rules can be applied with effect only when the position and course of the one ship are approximately known to the other. They are therefore frequently inapplicable in a fog. In that case each ship must comply with Art. 16. The steering and sailing rules will not be used by the Courts merely to decide, upon facts made known only by the event, which ship would have been in fault if there had been no fog (*r*).

"Running free": meaning of the term.

The classification of sailing ships contained in this Article occasions some difficulty. It is probably intended to be an exhaustive and not a cross classification. It is doubtful whether it is either the one or the other; the wording is at least ambiguous. "Running free" appears to mean not close-hauled; but the phrase is not happily chosen to describe a ship that has the wind a point or two free but forward of the beam (*s*). The words "with the wind abaft the beam" occur in Art. 15 (c). Again, the question arises, whether a vessel which "has the wind aft" can at the same time be "running free"; and, if so, whether (d) or (e) prevails; whether, if she is to leeward of the other ship, she is required to keep out of the way under Art. 17 (e), or to keep her course under the combined operation of Art. 17 (d) and Art. 21. A further question arises as to how the dividing line between "running free" and having "the wind aft" is to be drawn; whether, for example, a ship with the wind on the quarter, say, three points from dead aft, "has the wind aft." These difficulties will be found discussed at length in *The Privateer* (*t*), an Irish case. In that case the Court seems to have been of

(*q*) See *The City of Berlin*, (1908) P. 110.

(*r*) See *The Cathay*, 9 Asp. M. C. 31.

(*s*) A ship in this condition appears to be treated as close-hauled in the trades, though such a view was not countenanced by the Court: *The Earl Wemyss*, 6 Asp. M. C. 407.

(*t*) 7 L. R. Ir. 105; *infra*, p. 394. See also *The Bufoged Christensen*, 4 App. Cas. 669.

Article 17.

opinion that a ship may at the same time be "running free" and have "the wind aft"; and it appears to have been held in the same case that a ship with the wind about two points free was close-hauled; but the latter view receives no support from the Master of the Rolls, who recently expressed the opinion that a ship might be close-hauled when a little off the wind, but doubted whether she would be so if she had the wind a point and a-half free (*u*).

In *The Singapore* (*x*), decided under the Regulations of 1863, Lord Westbury appears to have used the phrase "running free" as equivalent to "free"—the term used in Art. 12 of the Regulations of 1863. But in that case the ship heading E. with the wind at N.W. was clearly both free and running.

In *The Spring* (*y*) a smack with the wind from two to four points from dead aft was held to have the wind aft within the meaning of Art. 12 of the Regulations of 1863.

A ship required to keep out of the way must go under the other's stern.

Under former regulations it was held that a vessel required to keep out of the way of another might do so in any way she thought proper. She might go ahead or astern of the other, and she might put her helm to port or starboard, as she thought best (*z*). Art. 22 of the existing regulations makes an important alteration of the law in this respect. If the circumstances permit, she must avoid crossing ahead of the other vessel—in other words, she must go under the other vessel's stern. The effect of this alteration in the law is, that if it is possible for her to go under the other ship's stern, and she attempts to cross her bows, she will be inevitably held in fault under the statute for a collision that may ensue.

Alteration in the law.

It has been held in America (*a*) that where two courses are open to a vessel required to keep out of the way, and she selects the more hazardous, she is responsible for a collision that would not have occurred if she had taken the safer course.

Art. 17 is supplemented and modified

Art. 17 is supplemented by, and must be read with, Arts. 21 and 24; the former requires the overtaken ship to keep

(*u*) *The Earl Wemyss*, 61 L. T. 289, 290; 6 Asp. M. C. 407.
(*x*) L. R. 1 P. C. 378.
(*y*) L. R. 1 A. & E. 99.
(*z*) *The Nor*, 2 Asp. M. C. 264; *The Carroll*, 8 Wall. 302; *The Great Eastern*, 3 Moo. P. C. N. S. 31.
(*a*) *The Empire State*, 1 Boned. 57.

Article 17.

by Art. 21 and Art. 24.

her course and speed (*b*); the latter requires every vessel overtaking another to keep out of the way (*c*); which she must do in the manner directed by Art. 27 (*d*). The difficulty which arose under the Rules of 1863, of drawing the line between "crossing" and "overtaking" ships (*d*), is intended to be removed by the opening words of Art. 24. It seems that under the existing regulations a sailing ship which is travelling faster than another ahead, or anywhere forward of her own beam, and coming up with her, must keep out of the way (*e*). The word "crossing," which governed the corresponding Art. 12 of the Regulations of 1863, does not occur in the Article now under discussion.

Duty of ship required to keep her course to stand on;

The duty of the ship close-hauled on the starboard tack, under Art. 17, is strictly to obey the rule requiring her to keep her course. She can excuse a departure from that rule only by showing that it was necessary to avoid immediate danger (*f*). "Keeping her course" under Art. 22 means keeping her course by the wind. If in so doing she comes to or breaks off a little, she does not thereby infringe Art. 22 (*g*); though it is an infringement if, alleging that she is close-hauled, she comes up as much as two and a-half points (*h*). But a vessel would not be justified by Art. 17 in standing on obstinately where it is clear that a collision may be avoided if she alters her helm, and in no other way (*i*).

though it is an infringement to come up as much as two points and a-half.

The rule requiring a ship close-hauled on the starboard tack to stand on appears formerly not to have been so strict as it is under the existing law. Formerly, where two vessels on opposite tacks were approaching with risk of collision, it was held to be the proper course for both to put their helms to port (*k*). Such is not now the law. Before altering her helm, a ship must ascertain what course the other ship is upon, and how she has the wind. Her duty is to wait until she knows what the regulations require her to do. A wrong

(*b*) See *infra*, p. 469.
(*c*) See *infra*, p. 435.
(*d*) See *infra*, p. 450.
(*e*) See *The Seaton*, *infra*, p. 439.
(*f*) See Art. 27.
(*g*) *The Marmion*, 1 Asp. M. C. 412; *The Nimo* and *The Amelia*, 2 Asp. M. C. 96; *The Emily B. Maxwell*, 96 Fed. Rep. 999.
(*h*) *The Earl Wemyss*, 6 Asp. M. C. 407.
(*i*) *The Lake St. Clair* and *The Underwriter*, 2 App. Cas. 389.
(*k*) *The Seringapatam*, 5 Not. of Cas. 61, 65.

step taken by a ship in ignorance of the other's course will cause her to be held in fault if a collision ensues. Article 17.

Hence arise cases of great perplexity to seamen. A ship, A., close-hauled on the port tack, sees a red light of another, B., ahead, and a point or two on his starboard bow. He cannot make out what is B.'s course. Not knowing which Article of the regulations applies to his case, A. stands on, and at the last moment bears up, thinking, erroneously, that B. is close-hauled on the starboard tack. At the same moment, B., who has the wind free, bears up. A collision follows, for which A. is probably held in fault, because he did not keep his course. The temptation for A., on first seeing B., to bear up, go about, wear, or to take other steps which he thinks will avoid risk of collision, without regard to the regulations, is strong. A hard case.

The following illustration may be suggested:—The wind being north, a ship close-hauled on the port tack and heading E.N.E., sees, within a quarter of a mile, and on her lee bow, a red light. The vessel to which it belongs may be either in stays, and heading N., or she may be close-hauled on the starboard tack, and heading from N.W. to W.N.W.; or, again, she may have the wind free, and be heading from W.N.W. to W. by S. In the first case supposed, the rapid alteration in the bearing of the light as it crossed her bows would assist her in arriving at the conclusion that the other ship was close-hauled on the starboard tack and heading about N.W., and in this case the duty of the first ship is clear—to keep out of the way. On the other hand, if the ship to which the red light belonged were light, under low sail, and making considerable lee-way, the alteration in the bearing of the light would be very slow, and it might easily be mistaken for the light of a ship having the wind free. In this case it would be very difficult for the ship on the port tack to appreciate the actual circumstances of the situation in time to comply with the regulations so as to avoid a collision.

In *The Theodore H. Rand* (*l*), the ship on the port tack was held not to be in fault, although she bore up and so caused

(*l*) 12 App. Cas. 247; *The Killeena*, Ad. Div., Nov. 1891, was a similar case.

Article 17.

the collision, because she could not, with reasonable care, have known that the other ship was running free.

Meaning of "close-hauled."

A vessel may be close-hauled within the meaning of Art. 17, although she is not lying so close to the wind that she cannot luff a trifle without throwing herself in stays (*m*). In *The Breadalbane* (*n*), a brig, heading six points from the wind, and a ship, with her fore-topsail carried away, heading seven and a-half points from the wind, were held to be both close-hauled. A ship sailing full and by, and being kept "a good full," would be close-hauled within Art. 17.

A ship with the wind free must keep out of the way of a ship hove-to, by virtue, it seems, of Art. 17 (a) or Art. 17 (e); for a ship hove-to is close-hauled within the meaning of this Article (*o*).

Whether a ship hove-to is within Art. 17 and required to keep out of the way.

It has already been stated (*p*) that Art. 4, relating to ships not under command, probably does not apply to a ship hove-to in the ordinary course of navigation. Art. 17, therefore, applies to a ship lying-to, so as to require her to keep out of the way, notwithstanding her comparatively helpless condition. In a case (*q*) decided in 1847 the facts were as follows: *The Lavinia*, a schooner close-hauled on the starboard tack, came into collision in broad daylight with *The London*, a schooner hove-to on the port tack. The crew of *The London* were engaged in reefing her topsail. The helm of *The Lavinia*, which had been lashed a-lee, was put over to port shortly before the collision. *The Lavinia* kept her course up to the moment of collision, and hailed *The London* to port. It was held that *The London* was solely in fault.

In the case of *The Young Alonso*, a dandy-rigged smack, hove-to on the port tack, was held in fault, under Art. 12 of the Regulations of 1863, for a collision with *The Rosalie*, a three-masted schooner, close-hauled on the starboard tack.

(*m*) *The Singapore* and *The Hebe*, Holt, 124; L. R. 1 P. C. 378, 383; *Chadwick* v. *The City of Dublin Steam Packet Co.*, 6 Ell. & Bl. 771; *The Earl Wemyss*, 6 Asp. M. C. 407.

(*n*) 7 P. D. 186. So *The Queen Elizabeth*, 100 Fed. Rep. 874, a ship going 6½ points from the wind, with yards braced sharp.

(*o*) *The Eleanor* v. *The Alma*, 2 Mar. Law. Cas. O. S. 240; *The Rosalie*, 5 P. D. 245; *The James*, Swab. 60; *The London*, 6 Not. of Cas. 29; *The Blenheim*, 1 Sp. 285; *The Ada A. Kennedy*, 33 Fed. Rep. 623. But see *The Alfredo*, 32 Fed. Rep. 240, where it was held that a sailing ship, hove-to and making no way ahead, should sound a bell and not a horn.

(*p*) *Supra*, p. 345.

(*q*) *The London*, 6 Not. of Cas. 29.

Article 17.

The collision was in the daytime in clear weather, and *The Rosalie* (*r*) was held to be also in fault. It does not appear that either vessel did anything to avoid the collision. On the other hand, in a recent Canadian case, a ship hove-to on the port tack was held not to be in fault for a collision, on the ground that she was practically helpless and could do nothing to avoid it (*s*).

Heaving-to in the track of ships.

The following American case is instructive upon a point which does not appear to have been sufficiently considered in the English cases. A schooner, with the wind free, was in collision with a pilot boat lying-to with her helm lashed a-lee. The pilot boat was forging ahead at the rate of about a knot an hour, as she kept coming to and falling off. Both vessels were, in 1866, held by the District Court of the United States to be in fault for the collision: the schooner for not keeping out of the way of a vessel which was "close-hauled," and the pilot boat for not keeping her course. The Court said that the proper course for those on board the pilot boat to have taken was to get way on her, so as to keep a steady course (*t*). This seems a reasonable decision as regards the duty of the pilot boat. It may well be doubted whether heaving-to in the track of ships and lashing the helm a-lee (*u*), in order to save the trouble of a hand at the helm, is not in itself negligence for which the ship should be held liable in case of collision (*x*). A vessel so situated is practically helpless to keep out of the way herself; and her lights are misleading to other ships because of her unsteady course and the lee-way she makes. It is a common practice for shrimpers in the Thames, and trawlers in the North Sea, to leave their vessels to drive with the tide in the manner described above. Line fishermen in the Channel and in the North Sea lower their head sails and ease off the main sheet. A vessel so handled is wholly out of control, and in case of collision she could hardly be heard to say that she was not in fault (*y*). It is

(*r*) 5 P. D. 245.

(*s*) *The Paramatta*, Stockton's V. Ad. Dig. Canada, 192.

(*t*) *The Transit*, 3 Beneed. 192. Cf. *The Haverton*, 31 Fed. Rep. 563.

(*u*) See *The General Gordon*, 7 Asp. M. C. 317.

(*x*) See *The Eleanor*, *ubi supra*. Cf. *The Admiral Schley*, 115 Fed. Rep. 378. In *The Columbian*, 100 Fed. Rep. 991, it was not held to be negligence.

(*y*) See note (*x*), *supra*.

Article 17.

submitted that a ship hove-to is required to exercise more than ordinary care, so that she may not be an obstruction to navigation (*z*). A tug drifting about in the track of ships without sufficient steam to get way upon her has been held in fault (*a*).

A ship that is bound to keep her course fails in her duty if, before the risk of collision is determined, she starts to reef, and thereby goes into collision by reason of the lee-way she makes before her canvas is full again (*b*).

Application of steering and sailing rules to ship dead in the water.

The steering and sailing rules are framed primarily for ships that are moving through the water; and it has been doubted whether they apply to a ship lying dead in the water, and unable effectually to comply with them (*c*). It would seem, however, that, so far as they can, they must do so.

Sailing trawler at work.

Whether a sailing trawler at work is within Art. 17 seems doubtful. By Art. 26, "sailing vessels under way" are required to keep out of the way of "sailing vessels . . . . fishing with . . . . trawls." This would probably be held to apply as between a sailing ship, other than a trawler at work, and a trawler at work.

The following cases, decided under the Regulations of 1863, illustrate the application of Art 17, and the circumstances under which it may be departed from:—

Cases illustrating Art. 17.

Two ships were turning to windward in a narrow channel, both on the starboard tack, and one following in the wake of the other. The leading ship, having stood as far towards the side of the channel as was prudent, went about. There was risk of collision if the other ship stood on. It was held that it was the duty of the following ship, although on the starboard tack, to go about when the leading ship did so (*d*).

Where, however, two sailing flats were beating to windward down the Mersey, and in the process of tacking backwards and forwards across the river the one gradually overtook the other, but before she had quite done so, and while

(*z*) See *The Attila*, 5 Quebec L. R. 340.

(*a*) *The Byron*, 2 New South Wales L. R. Ad. 1.

(*b*) *The Robert H. Rathbun*, 88 Fed. Rep. 549.

(*c*) See *The James T. Easton*, 27 Fed. Rep. 464.

(*d*) *The Priscilla*, L. R. 3 A. & E. 175; and see *The Lake St. Clair* and *The Underwriter*, 3 Asp. M. C. 361; *infra*.

the vessels were still on opposite tacks, they came into collision, it was held that the present Art. 17 applied, and that the overtaken vessel, which was close-hauled on the port tack, was at fault for not keeping out of the way of the overtaking vessel, which was close-hauled on the starboard tack (*e*).

In a case where the courses of the two ships were within a point of being directly opposite (W.N.W. and S.E. by E.), the Privy Council held that they were "crossing," and not "meeting," ships (*f*).

Where two vessels close-hauled on opposite tacks sighted each other at so short a distance that it was not possible for the ship on the port tack to avoid the other if the latter stood on, it was held that it was the duty of the latter to port and let go her head sheets (*g*).

Where a ship close-hauled on the port tack was unable to bear up owing to her head-gear being carried away, and the other ship, in ignorance of her disabled condition, kept her course, a collision which followed was held to be an inevitable accident (*h*).

Two heavy full-rigged ships were turning to windward in the St. Lawrence. One of them, *The Lake St. Clair*, whilst in stays, was struck by the other, *The Undercriter*, nearly at right angles on the starboard side. Those on board *The Undercriter* could not see that *The Lake St. Clair* was in stays in time to avoid her; but they might have avoided her if they had ported their helm when hailed to do so. *The Undercriter* was held in fault for not porting, and *The Lake St. Clair* for not having braced her head yards aback, and for having hauled her fore-yard (*i*).

The wind being somewhere from S. to S.S.E., the sloop *Constantine*, heading N.N.E., fell in with the cutter *Spring* heading W. by S., and to leeward. It was held that it was the duty of *The Constantine* to keep out of the way, and that the duty of *The Spring* was to keep her course (*k*).

(*e*) *The Annie*, (1909) P. 176; *The Priscilla* (*supra*) distinguished.

(*f*) *The Constitution*, 2 Moo. P. C. 453.

(*g*) *The Lady Anne*, 15 Jur. 18.

(*h*) *The Aimo* and *The Amelia*, 2 Asp. M. C. 96.

(*i*) *Wilson* v. *Canada Shipping Co.*, *The Lake St. Clair* and *The Undercriter*, 2 App. Cas. 389.

(*k*) *The Spring*, L. R. 1 A. & E. 99.

Article 17.

A full-rigged ship, with the wind free, crossing a brig and a schooner close-hauled on the same tack, was held in fault for approaching them so close that, upon the schooner going about, a collision with the brig was inevitable (*l*).

A ship just gathering way on the port tack, after going about, was held free from blame for a collision with another close-hauled on the starboard tack, which had approached her too near whilst in stays (*m*).

A collision occurred between the barque *St. Jean* and the barque *Privateer*. *The St. Jean* had the wind on the port side about two points free. *The Privateer* had the wind somewhere between dead aft and three points on the starboard quarter. It was held (in Ireland) that it was the duty of *The Privateer* to keep out of the way (*n*), either by virtue of the Regulation of 1880, corresponding to Art. 17 (a), or Art. 17 (e). The case of *The Singapore* (*o*) was relied on as an authority for the proposition, that a vessel heading as much as eight points from the wind is "close-hauled" within the meaning of the regulations. In that case a laden barque was heading seven points from the wind, and was held to be close-hauled. It is submitted that *The Singapore* is an extreme case, and that a vessel heading more than seven points from the wind cannot be properly said to be close-hauled.

A brig was heading E. by N. on the starboard tack, close-hauled, and a ship, also on the starboard tack, and said to be close-hauled (*p*), heading N.E. by E. half E., was to windward of her. Each vessel pleaded that the other, when first seen, was about four points abaft her own (*i.e.*, the complainant's) beam. It appears to have been held that the allegation of the brig was proved—that the ship was overtaking the brig; and that her duty, therefore, was to keep out of her way. But the case is not satisfactory, for the Court appears to have been of opinion that the ships were, in fact, not within the overtaking rule, but within Art. 17 (*q*).

Two ships, close-hauled on opposite tacks, were crossing

(*l*) *The Mobile*, Swab. 69; on app. *ibid.* 127; this case was under a former Act.

(*m*) *The Charlotte Raab*, Brown, Ad. 453.

(*n*) *The Privateer*, 7 L. R. Ir. 105.

(*o*) L. R. 1 P. C. 378.

(*p*) She had carried away her foretopsail shortly before the collision.

(*q*) *The Breadalbane*, 7 P. D. 186.

each other. The ship on the starboard tack was held in fault for not keeping out of the way when the other, being ahead and to windward, could not bear up without risk of collision, and could not go about because of a shoal (*r*). Article 17.

A sloop, with the wind free, was running through a narrow channel against a strong tide close to the shore. Two schooners, the combined length of which was equal to half the breadth of the channel, were beating to windward in the opposite direction. It was held that the sternmost of the schooners was in fault for standing on when under the stern of the leading schooner, so that when she was obliged to go about she ran into the sloop, which could not avoid her without going ashore (*s*).

Article 18.

Article 18.

Two steam vessels meeting.

Where two steam vessels are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

This Article only applies to cases where vessels are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two vessels which must, if both keep on their respective courses, pass clear of each other.

The only cases to which it does apply are when each of the two vessels is end on, or nearly end on, to the other; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own; and, by night, to cases in which each vessel is in such a position as to see both the side lights of the other.

It does not apply, by day, to cases in which a vessel sees another ahead crossing her own course; or by night, to cases where the red light of one vessel is opposed to the red light of the other, or where the green light of one vessel is opposed to the green light of the other, or where a red light without a green light, or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead.

This Article is almost identical with Art. 15 of the Regu-

(*r*) *The Ann Caroline*, 2 Wall. 538. Cp. *The Maggie J. Smith*, 16 Davis, 349, 354.

(*s*) *The Mark Eveline*, 16 Wall. 348.

Article 18.

lations of 1884. It contains the substance of Art. 13 of the Regulations of 1863, and of an Order in Council of the 30th of July, 1868, explaining the meaning of "end on." The interpreting order is said to have been made in consequence of the decision in *The Cleopatra* (*t*), by which the port helm rule of a former Act (*u*) was held to apply where the ships were on parallel courses green to green, each being on the starboard bow of the other (*x*).

As to Art. 16 overriding the steering and sailing rules, see *supra*, p. 383.

The words "each shall alter her course to starboard" are exactly equivalent to "the helms of both shall be put to port" of the Regulations of 1863 (*y*). The words "so that each may pass on the port side of the other" appear to be merely explanatory.

(*t*) Swab. 135. The case was followed in *The Arabian*, 2 Stuart's V.-Ad. Rep. 73.

(*u*) 17 & 18 Vict. c. 104, s. 296.

(*x*) See *The Odessa*, 4 Asp. M. C. 493.

(*y*) The alteration in the wording of the regulations was probably made with a view to a possible uniformity of system amongst the seamen of all nations as regards orders to the helm. In English ships the order which sends the ship's head to starboard is "port!" In France the equivalent order is "tribord!"—the literal translation of which is "starboard." In *London School Board* v. *Lardner*, Times, 20th Feb. 1884, a Thames pilot was held liable for a collision caused by his giving the order in French, "tribord!" with the intention of sending his ship's head to port. The man at the helm, a Frenchman, carried out the order in the French custom, by putting his helm to port, and thereby caused the collision. Some nations, including America, Austria, and Italy, adopt the English system, others the French; with the Scandinavian nations, the practice is said to vary in different ships. Since pilots of one nation are frequently in charge of ships of another nation, it is manifest that a uniform system is very desirable. The apparent paradox involved in the English system originated with the use of the tiller, the movements of which are opposite to those of the ship's head. Most vessels being now steered by a wheel, and the tiller being frequently aft of the rudder-head, the orders to the helm are altogether anomalous. With a wheel, and a tiller aft of the rudder-head, the order to send the ship's head to starboard is still "port!" whilst the wheel, the tiller, and the ship's head all move together in the same direction, to starboard. It is stated that in most French ships the tiller chains are so rove that the wheel turns to port as the ship's head goes to starboard. From Sir H. Manwayring's Seaman's Dictionary (1644), it appears that the existing practice is at least as old as the early part of the seventeenth century. Probably it has been the same since rudders and tillers were invented. It must be remembered that, when going astern, the action of the rudder is reversed, and that the order "port!" and corresponding movement of the rudder to starboard, send the ship's head to port.

Another source of confusion exists in the absence of a uniform system of orders to the helm given by the hand of the pilot or officer on the bridge. In some waters, the order to starboard the helm is given by extending the right hand, in others by extending the left.

Article 18.

As to the meaning of "so as to involve risk of collision," see above, p. 323.

Classification of ships into meeting, crossing, and overtaking ships.

In the existing regulations vessels approaching each other are described as "meeting" (*z*), "crossing," and "overtaking," or being overtaken. It appears that this classification is intended to include all cases of ships approaching or being approached by others. It is a cross classification, for although no ship that is a "crossing" ship can at the same time come within the rule for "meeting" ships, yet a "crossing" ship may at the same time be an "overtaking" ship, and be bound by Art. 24 (*a*).

Ship heading straight for the other.

A ship is "crossing" another whenever the lines of their courses, being prolonged, intersect; and not the less so because one ship is heading for the midships, or some other part of the hull, of the other (*b*).

Does Art. 18 apply to a ship dead in the water?

This and the following Articles which deal with steamships under way assume that both have way through the water. Whether they apply at all to a steamship lying dead in the water seems doubtful. Apart from the regulations, a vessel so situated has no right to put her engines ahead, so as to cross the bows of, or so as to embarrass, another obviously intending to pass her on one side or the other (*c*).

Abolition of the rule of "port helm" except in one case.

The rule contained in Art. 18 is not identical with the "port helm" rule of former Acts, or with the older practice of seamen mentioned in a former page (*d*). The existing regulations limit the application of the "port helm" to one case only, namely, where both the ships are steamships (*e*), and they are proceeding in directly opposite directions on the same line, or nearly so. In every other case the "port helm" rule is inapplicable, and the two ships must act as required by

(*z*) "Meets," in 17 & 18 Vict. c. 104, s. 296, had a wider meaning than "meeting" in the existing regulations. See *The Cleopatra*, Swab. 135; see also *The Inflexible*, Swab. 32, as to the application of sect. 296.

(*a*) See Arts. 17, 19, and 24. As to the distinction between "meeting" and "crossing" ships, see *The Franconia*, 2 P. D. 8; *The Peckforton Castle*, 3 P. D. 11; *The Broadalbane*, 7 P. D. 186; *The Seaton*, 9 P. D. 1; *The Columbia*, 10 Wall. 246.

(*b*) *The Oceanic*, 61 Fed. Rep. 338.

(*c*) *The Bristol*, 11 Fed. Rep. 156.

(*d*) Page 314. As to the application of the "port helm" rule of the Merchant Shipping Act, 1854, see *The Arthur Gordon* and *The Independence*, Lush. 270; and see cases cited, n. (*a*), and p. 399, *infra*.

(*e*) 17 & 18 Vict. c. 104, s. 296, applied to a steamship and also to a sailing ship: *The Ann*, Lush. 55.

Article 18.

the particular Article applicable to the case. There is reason to think that the important alteration of the law effected by the Regulations of 1863, and continued by those of 1880, has not produced a corresponding change in the practice of seamen. The proper application of the "port helm" rule in its existing shape requires the careful attention of seamen. Its indiscriminate application has been a fruitful source of collision.

Case of steamship making over the ground a course different from the direction of her head.

It appears from the explanatory part of Art. 18 that the application of that Article is determined, not by the directions in which two ships are approaching each other over the ground, but by the directions in which their heads are pointing. The case of a steamship crossing a tideway, of a vessel dropping up stern foremost with the tide and guiding herself with her helm and anchor (*f*), or of a tug with a heavy ship in tow making considerable lee-way, so that she is approaching another vessel upon a course over the ground directly opposite to that of the other, but in a direction different from that in which her head is pointing, does not seem to be expressly provided for. It will be noticed that under the existing regulations there is no "end on" rule for sailing ships, as there was under the Regulations (Art. 11) of 1863.

Both ships must port; neither need slacken after risk is determined.

"Altering her course to starboard" under Art. 18 means altering sufficiently to take her clear if the other ship does not starboard (*g*). The law is that both ships are to alter their courses to starboard, and the neglect by one to obey the law will be no excuse to the other, although there would have been no collision if one had ported (*h*). Where a ship is in a position to which Art. 18 applies, and she alters her course sufficiently to determine the risk of collision, she is not necessarily required at the same time to slacken her speed under Art. 23 (*i*). There is, however, some obscurity as to the circumstances under which Art. 23 applies. It has been held

(*f*) As in *The Smyrna*, mentioned *arguendo* in *The George Arkle*, Lush. 382.

(*g*) *The Jesmond* and *The Earl of Elgin*, L. R. 4 P. C. 1.

(*h*) See *The America*, 2 Otto, 432; *The Black Prince*, *infra*; *Little* v. *Burns*, 9 Ct. of Sess. Cas. 4th ser. 118; *The Mary C. Elphicke*, 115 Fed. Rep. 375.

(*i*) *The Earl of Elgin*, *supra*; *Wilson* v. *Currie*, (1894) App. Cas. 116.

Article 18.

to apply where there will be risk of collision if the vessels continue to approach each other (*k*).

If two steamships sight each other nearly right ahead, but so that each is a little on the starboard bow of the other, the law requires each to put her helm to port, although a collision would be avoided if each were to starboard, and that appears to be the safer and more convenient course. "It is essential that the law should be universally observed. If one obeys and the other does not, the utmost confusion and danger will be introduced. A vessel which obeys the law has a right to trust that the vessel which she meets . . . will obey it too, and she acts accordingly" (*l*).

What is "nearly end on"?

The meaning of "nearly end on" has not been exactly defined. Vessels upon parallel and opposite courses, each with the other nearly right ahead, and vessels upon courses making with each other an angle of two, or even three, points, were, before the interpretation of the term by Order in Council of the 30th July, 1868, held to be meeting "nearly end on." But in a case where the courses of the two ships were within a point of being directly opposite (W.N.W. and S.E. by E.) the Privy Council decided that the ships were "crossing," and not "meeting" (*m*). In a case subsequent to the Order in Council, vessels upon courses within one-and-a-half points of being directly opposite (S.S.W. and N.E. ½ N.) were held to be not end on (*n*). In another case (1870), two steamships going (*semble*) N.N.W. and S.E. were held to be "nearly end on" (*o*). And in a Scotch case, two vessels proceeding up and down the Clyde were held to be end on, each being about half a point on the starboard bow of the other (*p*).

It would seem that Art. 18 cannot apply to two ships rounding in opposite directions a promontory or a bend in a

(*k*) See *per* Brett, M. R., *The Beryl*, 9 P. D. 137, 141, *infra*, p. 410; and see *supra*, p. 324.

(*l*) *Per* Lord Kingsdown in *The Araxes* and *The Black Prince*, 15 Moo. P. C. 122; and see *The Cleopatra*, Swab. 135. These cases were under 17 & 18 Vict. c. 104, s. 296. See also *Little* v. *Burns*, *ubi supra*.

(*m*) *The Constitution*, 2 Moo. P. C. 453. *Aliter* in *The Myrtle*, 44 Fed. Rep. 779.

(*n*) *The Rona* and *The Ara*, 2 Asp. M. C. 182.

(*o*) *The Jesmond* and *The Earl of Elgin*, L. R. 4 P. C. 1.

(*p*) *Little* v. *Burns*, *The Owl* and *The Ariadne*, 9 Ct. of Sess. Cas. 4th ser. 118.

Article 18.

winding channel, and in such a position that the red light of one is opposed to the green of the other. But it is difficult to say how, in such a case, the ships are required to pass each other, and by what Article of the regulations they are governed. It seems that the "crossing" rule does not apply them (*r*).

It should be noticed that there is no "end on" rule in force in the River Thames. The corresponding Article of the Thames rules has a wider application than the Article under consideration (*s*).

Article 19.

Article 19.

Two steam vessels crossing.

When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other.

This Article corresponds with Art. 16 of the Regulations of 1884, from which it differs only verbally.

Vessels are crossing so as to involve risk of collision, "if at any time two vessels, not end on, are seen, keeping the courses to be expected with regard to them respectively, to be likely to arrive at the same point at or nearly at the same moment . . . but they are not so crossing if the course which is reasonably to be attributed to either vessel would keep her clear of the other" (*t*).

As to the meaning of "risk of collision," see above, p. 323; as to the distinction between ships "meeting," "crossing," and "overtaking," p. 435; as to how a ship is to "keep out of the way," pp. 385, 415; as to the duty of the ship, which has the other on her port side, to keep her course, p. 409; and as to Art. 16 overriding the steering and sailing rules, p. 383.

Overtaking ship; definition.

A vessel astern, or on the quarter of, another, and overtaking her, is an "overtaking" vessel within the meaning of Art. 24, and not a "crossing" vessel within Art. 19; she

(*r*) See *The Velocity*, L. R. 3 P. C. 44; *infra*, pp. 402 *seq.*

(*s*) See cases under Thames rules, *infra*, pp. 402 *seq.*

(*t*) *Per* Sir Francis Jeune in *The Pekin*, (1897) A. C. 532 at p. 536; approved in *The Albano*, (1907) A. C. 193.

Article 19.

must therefore keep out of the way, whatever the position of the other may be, whether on her own port or starboard side. This was so under the Regulations of 1884 (*u*), and the definition of an "overtaking" vessel in the existing regulations (Art. 24) removes any doubt which formerly existed upon the point. On the other hand, a vessel coming up with another from any direction less than two points abaft the beam of the latter is "crossing" and not "overtaking" her, and must comply with Art. 19 (*x*).

The words "shall keep out of the way" do not prevent the application of Art. 23.

Art. 19 must be read with Art. 24. The principle of Art. 24 is "once an overtaking ship, always an overtaking ship"; in other words, if a ship once comes within the obligation of Art. 24—if she is overtaking another ship with risk of collision—it is her duty under that Article to keep clear of the ship ahead, not only so long as she is two points or less abaft her beam, but after she draws up to her, so that, if she were not going faster than the other, she would be crossing her within the meaning of Art. 19. For the purpose of determining whether or no Art. 19 applies, the relative speed of the two ships is immaterial.

"Steam vessel" is defined by the preliminary Article (*supra*, p. 333). A tug or other steam vessel with a ship in tow must comply with Art. 19, as with the other steering or sailing rules (*y*).

Art. 19 does not override, but must be read together with, Art. 25 (*z*). In a winding river, the relative headings of two vessels may be such that they would be "crossing so as to involve risk of collision" if they were in the open sea, but, by reason of Art. 25, which requires them to navigate on the starboard side of the channel, the "crossing" rule of Art. 19 is not applicable, and the vessel which has the other on her starboard side must keep clear of the latter by keeping on the

(*u*) *The Seaton*, 9 P. D. 1, *infra*, p. 439; *The Molière*, (1893) P. 217.

(*x*) See *The Main*, 11 P. D. 132; *The Imbro*, 14 P. D. 73, 77; both cases under the Regulations of 1884.

(*y*) See *supra*, p. 167.

(*z*) *The Leverington*, 11 P. D. 117; dist. *The Pekin*, (1897) App. Cas. 532; also *The Ashton*, (1905) P. 21.

Article 19.

starboard side of the channel, and not by crossing the course of the other ship.

Application of Art. 19 in a winding river.

There have been some important decisions as to the application of the "crossing" rule in winding rivers. The steamship *Carbon*, coming up the Thames on the flood tide, and rounding a point where the river turns to starboard, under a port helm, saw a little on her starboard bow the masthead and red lights of *The Velocity*, a steamship coming down the river. In that part of the river it is usual for ships bound down to keep near the north shore. It was held that the ships were not "crossing" ships, and that *The Carbon* was wrong in porting and attempting to pass to the north of *The Velocity*. It was held by the Privy Council that the duty of each ship was to continue her course round the point in the usual track, in which case they would have passed clear (*a*).

The case of *The Velocity* was decided upon the general or sea Regulations of 1863, and before any special rules for the Thames were in force. According to this case, it appears that in winding rivers, and channels where no special rules are in force, two ships on opposite sides of a point, and rounding the bend, are not always, or for that reason alone, "crossing" ships. But it is not clear that this decision would be followed where the "crossing" rule has been in terms enacted for the regulation of navigation in a winding river. In *The Oceano*, decided under a Thames rule, practically identical with the present Art. 19, a steamship proceeding up the river, against an ebb tide, and in a reach of which the direction is S.W., was crossing the channel obliquely in order to clear a ship in her path. Whilst so doing, there was, on her starboard side, and in the reach above her, of which the direction is about W.N.W., another steamship coming down. The collision occurred about the meeting of the two reaches. It was held by the Court of Appeal that the ships were crossing ships, and that it was the duty of the vessel bound up the river to keep out of the way (*b*).

(*a*) *The Velocity*, L. R. 3 P. C. 44. See also *The Cologne* and *The Ranger*, L. R. 4 P. C. 519; *The Esk* and *The Niord*, L. R. 3 P. C. 436; *The Pekin*, (1897) App. Cas. 532; and the observations of James, L. J., on *The Velocity* in *The Oceano*, 3 P. D. 60.

(*b*) *The Oceano*, 3 P. D. 60. See

Article 19.

The Pekin (*c*) raised the same question, as to the operation of the crossing rule in a winding river, and *The Velocity* was followed. Probably *The Oceano* was considered to be inapplicable, because, for the Whangpoo river, where the collision occurred, no crossing rule had been expressly enacted.

A steamer bound for Penarth Dock, and showing the usual docking signal, was held not to be relieved from the duty of keeping out of the way of another steamer which was coming down Cardiff drain on her starboard bow (*d*).

Rounding a point.

Some difficulty has been found in the application of Art. 19 to cases, in which two steamships are approaching from different directions, and on intersecting courses, a buoy, lightship, headland or other point, at which each must in the ordinary course of navigation alter her course. It now appears that Art. 19 does apply to such cases. Thus in the case of *The Leverington* (*e*), where *The Rapid*, which was proceeding down the entrance channel to Roath Basin, having *The Leverington*, which was proceeding up Cardiff drain, on her port bow, was held at fault for not keeping her course and speed, and *The Leverington* was held to be under the correlative duty of keeping out of the way. The same principle was adopted in *The Ashton* (*f*), and the crossing rule was held to apply in the case of two vessels, which were approaching Clee Ness Buoy, the one being on a voyage to and the other on a voyage from Grimsby.

Where two vessels are approaching a pilot cutter, with a view to picking up a pilot, there is a duty upon that vessel which has the other on her starboard side to keep out of the way (*g*).

Vessels leaving dock.

The crossing rule does not apply as between vessels navigating in a river and vessels leaving docks, situated at

also as to the duty of two ships rounding a bend in a river, one outside the other, *The Bywell Castle*, 4 P. D. 219.

(*c*) (1897) App. Cas. 532; followed in *The Victory* and *The Plymothian*, 168 U. S. Rep. 410; *The L. C. Waldo*, 100 Fed. Rep. 502.

(*d*) *The St. Audries*, 5 Asp. M. C. 552; ep. *The Winstanley*, (1896) P. 297.

(*e*) *The Leverington*, 11 P. D. 117; *The Chittagong*, (1901) A. C. 597; dist. *The Pekin*, *supra*; but see *The Red Cross*, 10 Asp. M. C. 521.

(*f*) (1905) P. 21.

(*g*) *The Ada*, *The Sappho*, (1873) 2 Asp. M. C. 4; *The Albano*, (1907) A. C. 193; *The Roanoke*, (1908) P. 231. As to correlative duty to keep course and speed, see under Art. 21, p. 409.

Article 19.

the river side. Thus there was held to be no duty under Art. 19 upon a tug and tow, proceeding down the Mersey and having the Prince's Dock entrance on her starboard side, to keep out of the way of a vessel emerging from that Dock (*h*).

In America, under very similar circumstances, a vessel was held at fault for not keeping out of the way under Art. 14 of the Regulations of 1863 (*i*). This decision, however, seems to be inconsistent with other American decisions (*k*).

For cases relating to the duty of a merchantman to keep out of the way of a fleet of warships, see under Art. 27, p. 458.

Article 20.

Article 20.

Sailing ship and ship under steam.

Where a steam vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, the steam vessel shall keep out of the way of the sailing vessel.

This Article corresponds with Art. 17 of the Regulations of 1884, from which it differs only verbally.

As to "risk of collision," see above, pp. 323 *seq.*; as to how to "keep out of the way," pp. 385, 414; as to the duty of the sailing ship to keep her course, see Art. 21; and as to Art. 16 overriding the steering and sailing rules, see p. 383.

What is "proceeding."

A steamship hove-to under canvas, or steaming head to sea, but practically stationary, would probably be held to be "proceeding" (*l*); also a sailing ship in a flat calm (*m*).

Stationary vessel.

The fact that a steam trawler is lying with engines stopped, and more or less stationary in the water, will not excuse her from performing a duty to keep out of the way under this Article (*n*).

(*h*) *The Sunlight*, (1904) P. 100.

(*i*) *The Cayuga*, 14 Wall. 270. As to this case, see *The Non Pareille*, 33 Fed. Rep. 524; *The Commodore Jones*, 25 Fed. Rep. 506, and see *The Seaton*, 9 P. D. 1.

(*k*) See *The Oceanus*, 5 Benedict. 545; *The Governor*, Abbot, Ad. 108; *The Rhode Island*, Olcott, 505; 1 Blatchf. 363.

(*l*) See *The Jennie S. Barker*, 3 Asp. M. C. 42; *The Sunnyside*, 1 Otto, 208; *The Byron*, *supra*, p. 392. *Aliter*, where encumbered while hauling trawl: *The Gladys*, (1910) P. 13.

(*m*) *The Colorado*, 59 Fed. Rep. 300.

(*n*) *The Broomfield*, 10 Asp. M. C. 194. The trawler was not fishing.

Article 20.

Reason of the rule that a steamship must keep out of the way.

The reason of the rule of Art. 20 is said to be that a steamship is more completely under command than a sailing ship. She can go ahead in the teeth of the wind, and she can stop or go astern, as she pleases (*o*). This, however, is true only to a limited extent in the case of a tug with a ship in tow; and in approaching her the other ship must take her encumbered condition into consideration (*p*). In America a schooner was held in fault for not holding herself in stays to allow a tug with a fleet of barges in tow to pass (*q*). But the tug is a steamship within the meaning of Art. 20; and must comply with that Article, so far as she can (*r*). In narrow waters it is frequently dangerous for a long and heavy steamship to keep out of the way, where the sailing ship can do so without difficulty. But, if it is possible, the law requires the steamship to keep out of the way.

Duty of a steamship meeting, crossing, and overtaking a sailing ship.

The duty of the steamship under Art. 20 is the same, whether the sailing ship is close-hauled or free, and whether she is on the port or starboard tack. If the steamship is crossing the course of the sailing ship, and at the same time overtaking her, she is required to keep out of the way by Art. 24 as well as by Art. 20. If she is meeting the sailing ship end on, or nearly end on, she is not required by the regulations to pass on one side rather than the other; she may "keep out of the way," under Art. 20, as she thinks best. If she is being overtaken by the sailing ship, by Arts. 24 and 22 she is required to keep her course and speed (*s*).

The old rule of "port helm."

The difference between the rule contained in Art. 20 and the old rule of "port helm" should be observed. In the case of a sailing ship with the wind free meeting a steamship end on, her duty is to keep her course, and not, as has been supposed, to put her helm to port (*t*).

Heavy obligation on steamships.

The obligation which Art. 20 throws upon a steamship in every case where there is risk of collision with a sailing ship

(*o*) *The Arthur Gordon* and *The Independence*, Lush. 270.

(*p*) *The Arthur Gordon*, *supra*; *The Gala* and *The Zenobia*, Holt. 112.

(*q*) *The W. C. Redfield*, 4 Benedict. 227.

(*r*) See *supra*, p. 167.

(*s*) Under the Regulations of 1863, there was a doubt as to the duty of a steamship being overtaken by a sailing ship. See *The Philotaxe*, 3 Asp. M. C. 512.

(*t*) *The Bougainville* and *The Jas. C. Stevenson*, L. R. 5 P. C. 316.

Article 20.

is heavy. "It is the duty of a steamer where there is risk of collision, whatever may be the conduct of the sailing vessel, to do everything in her power that can be done, consistently with her own safety, in order to avoid collision" (*u*). At the same time, "When a steamer is condemned for having omitted to do something which she ought to have done, it seems just to require proof of three things: first, that the thing omitted to be done was clearly in the power of the steamer to do; secondly, that, if done, it would in all probability have prevented collision; and, thirdly, that it was an act which would have occurred to any officer of competent skill and experience in command of the steamer" (*x*). It follows from this that the mere fact that a ship required to keep out of the way has been in collision is not evidence of negligence on her part (*y*).

The duty of the steamship has been thus defined by the Supreme Court of the United States: "The rules require, when a steamship and sailing vessel are approaching from opposite directions or on intersecting lines, that the steamship, from the moment the sailing vessel is seen, shall watch with the highest diligence her course and movements, so as to be able to adopt such timely measures of precaution as will necessarily prevent the two boats coming in contact" (*z*).

And of a tug with a heavy ship in tow.

The fact of a tug having a heavy ship in tow, and a strong head wind against her, does not justify the tug in departing from Art. 20, and neglecting to keep out of the way of a sailing ship (*a*). A steamship of 1,356 tons was held in fault for not keeping out of the way, although she had in tow a disabled vessel of 1,495 tons, with a long scope of tow-rope, so that the towage was a service of difficulty (*b*). But very exceptional circumstances may throw the obligation of keeping out of the way upon the sailing ship. Thus a sailing ship running ten or twelve knots before a strong wind, and crossing the course of a tug going two or three

(*u*) *Per* Westbury, C., in *Inman* v. *Reck*, *The City of Antwerp* and *The Friedrich*, L. R. 2 P. C. 25, 30, 34.

(*x*) *Per* Westbury, C., *ibid.*

(*y*) In America a different view as to the burden of proof seems to be taken. See *The R. R. Kirkland*, 48 Fed. Rep. 760; and *supra*, p. 32.

(*z*) *The Carroll*, 8 Wall. 302, 306; *The Lucille*, 15 Wall. 676. *The Falcon*, 19 Wall. 75, is to the same effect.

(*a*) *The Warrior*, L. R. 3 A. & E. 553.

(*b*) *The American* and *The Syria*, L. R. 6 P. C. 127.

knots with a long and heavy fleet of barges in tow, has, in America, been held in fault for not keeping out of the way; probably upon the ground that it was not possible for the tug alone to avoid collision (*e*).

Duty of steam trawler under the Article.

A steam trawler, as such, will not be held excused for failure to comply with this Article; and as a steamship she will be held subject to all rules applicable to such a vessel. She can only be held excused for non-compliance with these rules provided that either (1) she was powerless by reason of her trawl to take action; or (2) she used to the best of her ability such power as she possessed. If either of these conditions be complied with, it appears that such "special circumstances" will be deemed to have arisen as to justify a departure from the rules under Art. 27 (*d*).

Thus in *The Tweedsdale* (*e*), a steamship with trawl down and making one or one and a half knots through the water was held excused for not taking steps till the last moment to keep out of the way of a sailing ship. On the other hand a trawler, which with her trawl in was proceeding with her engines at full speed (*f*), and a trawler, which with her trawl down was making two and a half to three knots, were both held in fault for not taking steps to keep out of the way of sailing vessels (*g*). It may be noted that the exhibition of trawler lights does not in itself justify non-compliance with this Article (*h*).

The duty of a sailing vessel approaching a steam trawler is by no means clear. Under the Order in Council which governed trawler lights until the present Art. 9 was promulgated, a steam trawler was justified, when at work, in showing either the ordinary lights of a steamship under way or else certain extraordinary lights indicating the nature of her employment. Where the trawler was exhibiting the extraordinary lights, it was held that there was a duty upon a

(*e*) *The Rose Culkin*, 52 Fed. Rep. 325; *The A. P. Cranmer*, 8 Fed. Rep. 523. *The Howard Carroll*, 41 Fed. Rep. 159, shows the limit of this indulgence to the tug.

(*d*) *The Tweedsdale*, 14 P. D. 164 at p. 169. Possibly the trawler is exempt by virtue rather of the statute than of Art. 27. See p. 450, *infra*, and *The Gladys*, (1910) P. 13.

(*e*) *Vide supra.*

(*f*) *The Upton Castle*, (1906) P. 147.

(*g*) *The Craigellachie*, (1909) P. 1.

(*h*) *The Upton Castle*, *vide supra.*

Article 20.

sailing ship approaching to keep out of her way (*i*). Where, on the other hand, the trawler was exhibiting the ordinary underway lights, it was held that sailing ships might regard this as an intimation that the trawler was capable of acting "as the regulations require an unencumbered vessel to act" (*i*).

Under the present Art. 9 no option is given to those in charge of a trawler, engaged in trawling, as to the lights or signals to be exhibited in such circumstances. A vessel approaching has consequently no indication as to the capacity for complying with the regulations, which the trawler deems herself to possess.

In the circumstances it is submitted, that a sailing ship, although a steamship exhibiting trawler lights may at times be fully capable of keeping out of her way (*k*), will be justified as a rule in keeping out of the way of all steamships exhibiting such lights.

Sailing trawler at work.

A sailing trawler at work would probably be held to be a "sailing vessel" within Art. 17; although in Art. 26 she is distinguished from a "sailing vessel." There can be no doubt that, either by virtue of Art. 17 or by the rules of ordinary seamanship, a steam vessel must keep out of the way of a sailing trawler.

Duty of the sailing ship.

The duty of the sailing vessel is to keep the course upon which she was when the other vessel was sighted; but where a sailing ship, when at a distance of two miles from the steamship, altered her helm slightly, it was held that she was not therefore in fault for the collision (*l*). The mere fact that a steamer is taking no step to keep out of the way will not cast upon the sailing ship the duty of manœuvring, for the steamer is able to manœuvre and keep out of the way even when the sailing ship is very close to her (*m*). But in the Thames, in a case where it was unsafe and impracticable for a steamer to keep out of the way of a sailing barge, and the steamer gave the signal prescribed by r. 21 of the

(*i*) *Per* Butt, J., in *The Tweedsdale*, *vide supra* at p. 171.
(*k*) *The Upton Castle*, *vide supra*.
(*l*) *The Norma*, 3 Asp. M. C. 272.
(*m*) *The Highgate*, 6 Asp. M. C. 512.

Thames Byelaws, the barge was held to blame for not keeping out of the way (*n*). Article 20.

A sailing ship in a fog, being aware of the proximity of a steamship under way, will not be held free from blame if she simply keeps on her course and does nothing. It is her duty to be on the alert, with her people stationed at the sheets and braces ready to let them fly and haul the yards, if necessary, so as to assist the helm in case the steamship comes into view at so short a distance that a collision can be avoided only by action on the part of the sailing ship (*o*).

Cases illustrating Art. 20.

A sailing ship turning to windward in the Thames went about when she got to the edge of the tide without giving any notice to a steamship astern of her. The steamship was held solely in fault for a collision which followed (*p*).

A barque, rounding-to before coming to an anchor, was held not to be in fault for a collision with a steamship, although the steamship alleged that she was baffled by the rapid change of the barque's lights, and that the collision was caused by the barque's departure from the rule requiring her to keep her course (*q*). But a steamship rounding-to in the Clyde was held in fault for not warning a ship astern of her intention to bring up (*r*).

But a sailing ship must not go about at an improper time or place so as to embarrass the steamship (*s*).

Article 21.

Where by any of these rules one of two vessels is to keep out of the way, the other shall keep her course and speed. Article 21.

Note.—*When in consequence of thick weather or other causes, such vessel finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also shall*

(*n*) *The Longnewton*, 6 Asp. M. C. 302.

(*o*) *The Zadok*, 9 P. D. 114, 118.

(*p*) *The Palatine*, 1 Asp. M. C. 468.

(*q*) *The Monsoon* v. *The Neptune*, 2 Mar. Law Cas. O. S. 289; Holt, 186.

(*r*) *The Queen Victoria*, 7 Asp. M. C. 9.

(*s*) *The General Lee*, 19 L. T. 750 (Irish case); *The Potomac*, 8 Wall. 590; *The Mary Ann*, 11 Fed. Rep. 336; and see *infra*, pp. 416, 488, as to a sailing ship beating out her tack.

Article 21. *take such action as will best aid to avert collision.* (*See Arts.* 27 *and* 29.)

This Article corresponds with Art. 22 of the Regulations of 1884; but there is a notable alteration. The words "and speed" are new. The note is also new, but so far as it only calls attention to the subsequent Arts. 27 and 29, it makes no alteration in the law. Whether the effect of the words "take such action as will best aid to avert collision" is limited by the reference to those Articles is not clear.

The regulations which require one of two vessels to keep out of the way are Arts. 17, 19, and 20. These Articles are supplemented by, and must be read together with Art. 21. Art. 16 overrides all the steering and sailing rules including Art. 21 (*supra*, p. 383).

Art. 21, so far as it requires a sailing ship to keep her speed, appears to be superfluous, since without altering her course (*t*) she could hardly alter her speed. Setting or shortening canvas, whilst there is risk of collision, might possibly be held to be an infringement of the Article. But with reference to steamships, the words "and speed" make an important alteration in the law (*u*) when read together with the existing Art. 23. Under the Regulations of 1884 (*x*), a steamship approaching another with risk of collision was required to slacken her speed, or to stop and reverse her engines; under the present regulations, Arts. 21 and 23, being mutually exclusive of each other, cannot apply to the same ship at the same time; and a ship, whose duty it is to keep her course, is under no obligation to slacken her speed or to stop and reverse under Art. 23. The obligation upon her, under the present regulations, is to "keep her course and speed." This does not mean that, after the Article has come into operation, she must make no

(*t*) The decisions show that the word applies to a ship that is by the wind.

(*u*) It was doubtful under the Regulations of 1884 whether a ship required to keep her course (Art. 22) was at liberty to alter her speed. In *The Beryl*, 9 P. D. 4, Brett, M. R., said that the rule had nothing to do with speed; and in *The Leverington*, 11 P. D. 117, the ship required to keep her course "went on faster," and was not held in fault. On the other hand, in American cases, *The Britannia*, 34 Fed. Rep. 545; 46 Davis, 130; *The Norge*, 55 Fed. Rep. 347, *infra*, p. 417; *The Nutmeg State*, 62 Fed. Rep. 847, the contrary view seems to have been taken.

(*x*) Art. 18 of those regulations.

Article 21.

alteration either in compass course or in the mode in which her engines are being worked. "Course and speed" in this Article "mean course and speed in following the nautical manœuvre in which, to the knowledge of the other vessel, the vessel is at the time engaged" (*y*). Thus where two steamships were each making for a pilot cutter to pick up a pilot, it was held that the vessel upon whom the duty lay to keep her course and speed was justified in slowing down in order to follow the nautical manœuvre in which she was, to the knowledge of the other vessel, engaged, that is to say, to pick up the pilot (*z*). Similarly it has been held in a winding river that the direction to "keep her course" does not mean that the ship is to continue going ahead in the direction in which her head happens for the moment to be pointing, without regard to other circumstances, but that she is to continue the course she would pursue if the other vessel were not in sight (*a*). Thus, a vessel rounding a point in a river, and approaching another under circumstances which require her to keep her course under Art. 21, must continue her course round the point in the usual track (*b*).

Meaning of "course and speed."

The rule requiring a ship to keep her course and speed must be observed strictly (*c*). So long as there is a possibility of the other ship clearing her, she must stand on. Thus Sir James Hannen refused to find a sailing ship to blame for taking no step, until the last moment, to avoid collision with a steamer which she saw was taking no measures to keep out of the way: "The guide of the steamer's action is the presumption that the sailing vessel will keep her course" (*d*). With reference to the same rule under a previous Act, Dr. Lushington said:—"I wholly deny that danger would be averted, or that infinitely greater danger would not occur, if a vessel close-hauled on the larboard tack,

Art. 21 must be strictly observed.

(*y*) *Per* Alverstone, C. J., *The Roanoke*, (1908) P. 231, at p. 239.

(*z*) *The Roanoke*, *supra*; cf. *The Aureole*, 105 Fed. Rep. 699.

(*a*) *The Velocity*, L. R. 3 P. C. 44. In *The Banshee*, 6 Asp. M. C. 221, different opinions upon this point were expressed by members of the Court of Appeal.

(*b*) *The Velocity*, *supra*; *The Esk* and *The Niord*, L. R. 3 P. C. 436; *The Cologne* and *The Ranger*, L. R. 4 P. C. 519. See also *The John Taylor*.

(*c*) *The Saragossa*, 7 Asp. M. C. 289.

(*d*) *The Highgate*, 6 Asp. M. C. 512, *supra*, p. 408; *The New York*, 82 Fed. Rep. 819.

Article 21.

on descrying a steamer, were to take upon herself to deviate from her course for the purpose of getting out of the way; because I am of opinion that by so doing it would lead to the chance of infinitely more collisions than at present" (*e*). The Supreme Court of the United States is equally strict in its interpretation of the rule, and for the same reasons. "The negligence of one (ship) is liable to baffle the vigilance of the other; and if one of the vessels, under such circumstances, follows the rule, and the other omits to do so, or violates it, a collision is almost certain to follow" (*f*).

But subject to the exception of special circumstances.

But, like the other steering and sailing rules, Art. 21 is subject to the exception (Art. 27) of special circumstances. Thus, a ferry-boat just entering her dock in New York harbour is not required to keep her speed to the danger of herself and her passengers (*g*). A ship that was being overtaken stopped to allow a third ship to cross her bows, and then went ahead. She was held to be free from fault (*h*).

A tug (*i*), with craft in tow, was being overtaken by another tug and tow. The former had to alter her course to avoid an approaching steamship, and before doing so, whistled and got an answering whistle from the steamship; both which whistles the overtaking tug might have heard. The overtaking tow collided with the tow ahead. The overtaking tug was held alone in fault.

It has been held by the Privy Council that "if a ship bound to keep her course undertakes to justify her departure from that rule, she takes upon herself the obligation of showing both that her departure was, at the time it took place, necessary in order to avoid immediate danger, and also that the course adopted by her was reasonably calculated to avoid that danger" (*k*); and the alteration must be no

(*e*) *The Vivid*, 7 Not. of Cas. 127; *The Immaganda Sara Clasina*, 7 Not. of Cas. 582; *The Test*, 5 Not. of Cas. 276.

(*f*) *New York and Liverpool U. S. Mail. Co.* v. *Rumball*, 21 How. 372, 384; *Belden* v *Chase*, 150 U. S. Rep. 674; *The Britannia*, 46 Davis 130.

(*g*) *Walsh* v. *Brooklyn and New York Ferry Co.*, 68 Fed. Rep. 507.

(*h*) *The Mesaba*, 111 Fed. Rep. 215.

(*i*) *The Whiteash* and *The Winnie*, 64 Fed. Rep. 893.

(*k*) *The Agra* v. *The Elizabeth Jenkins*, L. R. 1 P. C. 501; and see the observations of Dr. Lushington in *The Test, ubi supra*.

Article 21.

more than is necessary (*l*). There are decisions of the Supreme Court of the United States to the same effect (*m*).

This rule is perhaps the most difficult of all the regulations for seamen to adhere to. The stringency with which it is applied by the Courts makes it necessary for an officer to take his ship into close proximity to another, where it may appear that risk of collision would be at once determined by directing her course away from the other ship. On the one hand is the law which says that a ship must not keep her course after it becomes manifest that she can, by altering her course, avoid collision (*n*); on the other hand is the arbitrary enactment which throws upon her the burden of proving that her alteration of course was made at and not before the necessary moment (*o*). To determine that moment is one of the most difficult tasks imposed upon the seaman by the law; to define it in terms is impossible, and the Legislature makes no attempt to do so. To stand on as long as it is possible to do so without immediate and manifest danger seems to be what the Courts require. By a judge of the Supreme Court in America, it was said that a vessel "will not be held in fault for maintaining her course and speed, so long as it is possible for the other to avoid her . . . . at least, in the absence of some distinct intimation that she is about to fail in her duty" (*p*).

In the case of a sailing ship, A., close-hauled on the port tack, approaching another, B., having the wind free on the starboard tack within the crossing rule, unless there are exceptional circumstances, and it is certain that B. will not keep out of the way, A. has no choice but to stand on (*q*).

How a ship hove-to is to "keep her course";

Where the vessel required to keep her course is hove-to, it appears to be the duty of those on board to fill on her and

(*l*) *The Saragossa*, 7 Asp. M. C. 289.

(*m*) *The Scotia*, 14 Wall. 170; *The Potomac*, 8 Wall. 590.

(*n*) *The Underwriter*, 3 Asp. M. C. 361; *The Rosalie*, 5 P. D. 245; *The Sunnyside*, 1 Otto, 208; *The City of Hartford*, 7 Beued. 350.

(*o*) See *The Bruxellesville*, Ship. Gaz., 23rd Nov. 1907.

(*p*) Cf. *The Ranza*, Ship. Gaz., 13th Dec. 1898; *The Ornen*, in Ct. App., 23rd Jan. 1900; *The Albano*, (1907) A. C. 193; *The Delaware*, 54 Davis, 459; *The Britannia*, 46 Davis 130; *The New York*, 82 Fed. Rep. 819.

(*q*) See *The Bygfoged Christiansen* and *The William Frederick*, 4 App. Cas. 669; *The Illinois*, 13 Otto, 298; *The Highgate*, 6 Asp. M. C. 512. See also *supra*, p. 389, for a "hard case."

Article 21.

get her under command without altering her course more than is necessary (*r*).

A vessel hove-to with her helm lashed to leeward, forging ahead as she comes to and falls off, does not fulfil the requirements of Art. 21 (*s*).

and a ship by the wind.

A vessel close-hauled does not by luffing a little, and so that she does not lose her headway, break the rule requiring her to keep her course (*t*); nor, it is submitted, does she infringe Art. 21 by breaking off if the wind heads her (*u*). But a vessel which luffed to the extent of two and a-half points was held to have infringed the regulation (*x*). And it has been held that a vessel does not, by altering her course so as to give an overtaking ship more room to pass, infringe the rule (*y*). If a close-hauled ship departs from the rule requiring her to keep her course, as a general rule she should luff rather than bear up, as she thereby lessens her way, and, if a collision takes place, its effect is likely to be less disastrous (*z*).

Cases illustrating the application of Art. 21.

The following cases illustrate the application of Art. 21:

A sailing ship, with the wind aft, meeting a steamship nearly end on, was held in fault for porting (*a*). But a slight alteration in the helm of a sailing ship, when an approaching steamship was two miles distant, was held not to be an infringement of the rule requiring her to keep her course (*b*). And a steamship, with another a quarter of a mile astern on her port quarter, and overtaking her, was held not to be in fault for porting half a point (*c*).

A sailing ship must not go about close ahead of a steamship, so as to embarrass the latter and make it difficult for

(*r*) *The General Lee*, 19 L. T. 750.

(*s*) *The Transit*, 3 Bened. 192; and see further, p. 390, above, as to the duty of a ship hove-to.

(*t*) *The Marmion*, 1 Asp. M. C. 412; *The Aimo* and *The Amelia*, 2 Asp. M. C. 96; *The Great Eastern*, 3 Moo. P. C. N. S. 31; *The Singapore*, L. R. 1 P. C. 378.

(*u*) She would be in fault if she broke off more than necessary; as in *The Elizabeth Jones*, 5 Davis, 514.

(*x*) *The Earl Wemyss*, 6 Asp. 364, 407.

(*y*) *The Franconia*, 2 P. D. 11; but see *The Corsica*, 9 Wall. 630; *infra*, p. 417.

(*z*) *The Agra* and *The Elizabeth Jenkins*, L. R. 1 P. C. 501; *The Great Eastern*, *ubi supra*.

(*a*) *The Bougainville* and *The James C. Stevenson*, L. R. 5 P. C. 316.

(*b*) *The Norma*, 3 Asp. M. C. 272; cf. *The Banshee*, 6 *ibid.* 221; and *The Roanoke*, (1908) P. 231.

(*c*) *The Franconia*, 2 P. D. 8.

her to keep out of her way (*d*). But a steamship, attempting to pass a sailing ship turning to windward in a narrow channel, must be prepared for the sailing ship going about, and the latter is under no obligation to give notice of her intention to go about (*e*). Article 21.

It seems that where risk of collision exists, a sailing ship is not entitled to go about until compelled to. Then Art. 27 applies, and excuses her for not keeping her course. A three-masted schooner was standing in towards the Goodwin Sands on the port tack, heading W. by S. Approaching her was a steamship on a S.S.W. course, having the schooner about one point on her starboard bow, and under such circumstances that there was risk of collision. The schooner went about, and there was a collision. The question was, whether the schooner had infringed Art. 21. The opinion of the Trinity Masters was asked by Butt, J., in these terms:—Would there have been any risk to the schooner, having regard to the tide (running to the westward) and all the surrounding circumstances, if she had stood further in towards the sands? The answer to this question being in the affirmative, it was held that Art. 27 applied, and that the schooner had not infringed the regulations by going about (*f*).

In a Canadian case a sailing ship in tow with sail set was struck on the quarter by another vessel in tow of the same tug, and was forced against an overtaking steamship (*g*). She was held in fault for not keeping her course; *sed qu.* as to the reason of the decision.

A smack hove-to on the port tack, with her helm lashed, was heading so as to cross the course of a three-masted schooner close-hauled on the starboard tack. Neither vessel did anything until the collision was inevitable. The schooner, as well as the smack, was held in fault, because she did not bear up in time (*h*).

In America it is held to be the duty of a ship working to American cases.

(*d*) *The Saucy Lass* v. *The Bolderaa*, Holt, 205; *The Mary Ann*, 11 Fed. Rep. 336.

(*e*) *The Palatine*, 1 Asp. M. C. 468. It is not quite clear in this case whether it was necessary for the sailing ship to go about when she did.

(*f*) *The Orwell*, Ad. Div. 17th Dec. 1887.

(*g*) *The Farewell*, 8 Quebec L. R. 87.

(*h*) *The Rosalie*, 5 P. D. 245.

Article 21.

windward, in company with other ships, to "beat out her tack." If she goes about in a narrow channel before the shoaling of the water or other dangers of navigation require it, and thereby embarrasses another ship which would have cleared her if she had stood on, she was held to be in fault for the collision (*i*). In a case of collision between a sailing ship turning to windward and a steamship, the Circuit Court said: "What the law requires for a sailing vessel in a narrow channel is, to beat out her tack, and, having beat it out, to come about with all proper despatch upon the other, leaving to the steam vessel the responsibility of being in a position to enable her to do so without danger" (*k*). But this rule does not require a ship to be held in fault merely because she goes about before she is obliged to, provided she does not thereby embarrass the other ship (*l*).

In a case where it was proved that there was, at the time of the collision, a flat calm, it was held by the Supreme Court that the sailing ship, whose duty it was to keep her course, could not be in fault (*m*).

The rule requiring a vessel to keep her course is strictly enforced by the Courts in the United States. A sailing ship approaching a steamship, admitted that so soon as there was risk of collision she kept away two or three points. She was held to be in fault. The Court said (*n*): "A vessel whose duty it is to keep her course has no right to change it as soon as she apprehends a collision. In this case the duty of the tug to keep out of the way of the lighter arose only when the two vessels were proceeding in such directions as to involve risk of collision; and it was under the same circumstances that the duty arose on the part of the lighter to keep her course. Therefore, under the statute requiring the lighter to keep her course, her apprehension of a collision could not justify her in changing her course. Moreover, it is the

(*i*) *The Empire State*, 1 Bened. 57; *The Harrisburg*, 71 Fed. Rep. 894; *The Relief*, 63 Fed. Rep. 169; *The A. W. Thompson*, 39 Fed. Rep. 115; *The Clara Davidson*, 24 Fed. Rep. 763.

(*k*) *The Empire State*, *ubi supra*.

(*l*) *The Coe F. Young*, 49 Fed. Rep. 167.

(*m*) *The Commerce*, 16 Wall. 33.

(*n*) *The General U. S. Grant*, 6 Bened. 465, 467; and see *The Adriatic*, 17 Otto, 512, as to the duty of a sailing ship to keep her course. See also *The Stephen Morgan*, 4 Otto, 599.

Article 21.

actual risk or danger of collision that determines the duty of both vessels, and not the apprehension merely. The rule was made and is administered for the very purpose of preventing the vessel charged with the duty of avoiding the other from being embarrassed by a change of course on the part of the other into danger, on the apprehension that such duty of avoidance will not be fulfilled."

A schooner seeing the mast-head light of a steamship, and mistaking it for a light ashore, hove-to to get a cast of the lead, thereby presenting her red light to the steamship. The steamship ported. The schooner, on discovering her mistake, got under way, and crossed the course of the steamship, showing her green light. It was held that the schooner was solely in fault for not keeping her course (*o*).

The danger of departing from Art. 21 is illustrated by an American case, where a vessel, A., starboarded in order to assist another, B., whose duty it was to keep out of her way, in an attempt to cross her bows. Finding that she could not cross A.'s bows, B., at the last moment, stopped. In consequence of B.'s stopping and A.'s starboarding, a collision occurred. A. was held to be solely in fault (*p*).

On the other hand, a sailing ship has been held in fault for bringing about a collision between herself and a steamship by premature action (*q*).

A dredger at work in New York harbour, driving with the tide about one knot an hour over the ground, in fear of a steamship which was shaping to pass between her and another dredger at very close quarters, got up her gear and steamed ahead, thereby making it impossible for the steamship to avoid her. She was held alone in fault (*r*). It was proved that ocean steamships often passed such craft within a few feet.

A steamship crossing another on her starboard side gave two blasts with her whistle and got a two-blast answer back. She starboarded her helm and slowed her engines.

(*o*) *The Virgo*, 7 Beued. 495.
(*p*) *The Corsica*, 9 Wall. 630.
(*q*) *The Kirkwall*, 11 Asp. M. C. 173; but see *The Energia*, 56 Fed. Rep. 124.
(*r*) *The Norge*, 55 Fed. Rep. 347.

Article 21. She was held in fault for causing the collision by slowing her engines (*s*).

Article 22.

Article 22. *Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other.*

This Article is first found in the present regulations. To cross another ship's bow unnecessarily, where collision is probable or even possible, is an unseamanlike manœuvre, and apart from the regulations would be held to be negligent in fact and in law. The insertion of the Article is probably due to the fact that under former regulations a ship, whose duty it was to keep out of the way, was not, in the Courts, held to be in fault, merely because she attempted to cross the bows of the ship with which she came into collision (*t*). Expressions were used in these cases, which were capable of being misunderstood by seamen, as meaning that a ship had as much right to cross the bows of another as to go under her stern, and it was thought necessary to put the matter beyond doubt (*u*).

One effect of the insertion of this elementary proposition of seamanship in the regulations is, to make it difficult for a ship that is struck by the stem of another to escape being held in fault under 57 & 58 Vict. c. 60, s. 419. For sailing ships working to windward the rule is now clear, that the ship on the port tack must bear up and not luff, unless the circumstances are such that to bear up is impossible or certain to cause collision.

Article 23.

Article 23. *Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse.*

(*s*) *The Nutmeg State*, 62 Fed. Rep. 847.

(*t*) See *The Nor*, 2 Asp. M. C. 264; *The Carroll*, 8 Wall. 302; *The Great Eastern*, 3 Moo. P. C. N. S. 31.

(*u*) "Give way" in the Trinity House rule of 1840 meant "go astern of." See *The Rose*, 2 W. Rob. 1.

Article 23.

This Article corresponds with Art. 18 of the Regulations of 1884, but the wording and effect of it are different. It applies only to one of the ships, namely, the ship whose duty it is to keep out of the way; Art. 18 of the Regulations of 1884 applies to both ships. The duty of the other ship, in the absence of special circumstances, is to keep her course and speed. The Article cannot, presumably, apply to a steamship lying dead in the water with her engines stopped.

Apart from the regulations, it would be negligence in a steamship which failed to slacken her speed, or to stop or reverse, if such a manœuvre were "necessary" to avoid collision (*x*); and Art. 23 appears to be little more than a declaration of the law in this respect (*y*). But in this, as in the other cases provided for by the regulations, the statutory effect (*z*) of not complying with the Article must not be overlooked.

In *The Ebor* (*a*) Lord Esher said that Art. 18 cannot be broken without at the same time breaking Art. 13 of the Regulations of 1884. This cannot be said of the corresponding Articles (Art. 16 and Art. 23) of the existing regulations, by reason both of the additional paragraph now contained in Art. 16 and also of the limitation of the duty to stop and reverse to the vessel which is directed to keep out of the way. It may be observed, however, that a vessel, hearing a fog signal apparently forward of her beam, the position of which is not ascertained, does not in all circumstances fulfil her duty by complying with Art. 16 alone. Thus a steamship was held in fault for not reversing as well as stopping on hearing a single blast of a fog-horn apparently on the port bow, since it was considered that those in charge of her should have realised, having regard to the wind, that a sailing ship was likely to cross ahead of them on the starboard tack (*b*). This rule, however, will, it seems, only apply to cases in which the indications of the position and probable course of the vessel, in respect of which the Rules would in

(*x*) See *The Birkenhead*, 3 W. Rob. 75; *The James Watt*, 2 W. Rob. 270; *The Vivid*, 7 Not. of Cas. 127.

(*y*) See *per* Lord Halsbury, C., in *The Ceto*, 14 App. Cas. 670, 673; *per* Lord Bramwell, *ibid.* p. 689.

(*z*) Under 57 & 58 Vict. c. 60, s. 419.

(*a*) 11 P. D. 25.

(*b*) *The Merthyr*, 8 Asp. M. C. 475.

Article 23.

clear weather require some course to be taken, are reasonably clear, and where they were not so reasonably clear a steamship was held in fault for keeping her course and speed under the crossing rule (*e*).

The wording of Art. 23 differs from that of Art. 18 of the Regulations of 1884, as regards the position of the words "if necessary." There was formerly doubt whether these words governed the whole Article, or whether they applied only to stopping and reversing (*d*). It is clear that the present Article does not require a ship to stop and reverse in every case where there is risk of collision, but only where it is "necessary." The necessity which the Article speaks of is the necessity of avoiding risk of collision (*e*). "Necessary" does not mean that the situation is such that without stopping and reversing a collision would take place; it means, rather, prudent or expedient (*f*). Necessity exists, if "the circumstances are such as to convey to the mind of a skilled seaman that risk of collision is so imminent as to make it indispensable to stop and reverse" (*g*).

A steamship in a fog so dense that a vessel could not be seen her own distance off, hearing the whistle of another continually approaching, was held in fault for not reversing until the other vessel was seen (*h*). But the decisions cited below show that the direction to "reverse if necessary" is not confined to cases of imminent danger such as this.

In America it has been held that the duty to stop and reverse does not arise until it becomes clear that the other ship, whose duty it is to alter her course, does not intend to do so (*i*). The precise effect of the "stop and reverse" rule does not appear to have been so fully considered in the American as in the English cases.

In *The Ceto* (*ubi supra*), Lord Fitzgerald seems to have been of opinion that, where risk of collision exists, for a ship

(*e*) *The Cathay*, 9 Asp. M. C. 35. See also *Crawford and Another* v. *Granite City S.S. Co.*, Sc. L. Rep. xliii. 732.

(*d*) See *The Ceto*, 14 App. Cas. 670, 684; *The Beryl*, 9 P. D. 137, 145.

(*e*) *Per* Lord Watson, *The Ceto*, 14 App. Cas. 670, 684.

(*f*) *Per* Lord Bramwell, 14 App. Cas. 689.

(*g*) *Per* Lord Fitzgerald, *ibid.* p. 690; and see *per* Lord Herschell, *ibid.* p. 694.

(*h*) *The Dordogne*, 10 P. D. 6.

(*i*) *The John King*, 49 Fed. Rep. 469.

Article 23.

without necessity to stop and reverse so as to bring herself to a standstill is negligence (*k*). It is submitted that no such general rule can be laid down, though under certain circumstances the manœuvre may be wrong.

The necessity must be apparent.

In *The Beryl* (*l*), Bowen and Fry, L. JJ., questioned whether the words "if necessary" mean "if it is actually necessary," or, "if the officer in charge should reasonably think that a necessity has arisen." In *The Ceto* (*m*), it was held that the latter interpretation is the correct one.

"The necessity must not be such as to become manifest only when all the facts are ascertained. It must be such as would be apparent to a seaman of ordinary skill and prudence with the knowledge which he possesses at the time" (*n*). Lord Esher had previously expressed the same opinion: "When you speak of rules that are to regulate the conduct of people, those rules can only apply to circumstances which must or ought to be known to the people at the time. You cannot regulate the conduct of people as to unknown circumstances" (*o*).

In what waters it applies.

Like the rest of the regulations, Art. 23 probably applies in rivers, harbours, and other tidal waters, as well as at sea (*p*). The corresponding Article of the Regulations of 1884 was held to apply in the Clyde, where local rules are in force (*q*).

Effect of non-compliance.

In consequence of the decision of the House of Lords in *The Khedive* (*r*), it is of the highest importance that the construction and application of Art. 23 should be properly understood. Like the other steering and sailing rules, it must be read in conjunction with Art. 27; but although that Article has been held to justify a steamship in not stopping and reversing where going ahead is the one only chance of avoiding collision, the officer who elects not to stop and

(*k*) 14 App. Cas. 670, 693.

(*l*) 9 P. D. 137, 144.

(*m*) 14 App. Cas. 670; followed in *The Knarwater*, 63 L. J. Ad. 65; and distinguished in *The Lord Bangor*, *supra*, p. 167.

(*n*) *Per* Lord Herschell at p. 694. See also *dicta* of Lord Watson at p. 686.

(*o*) *The Beryl*, 9 P. D. 137, 138. These words were quoted with approval by Lord Herschell in *The Theodore H. Rand*, 12 App. Cas. 250; and by Lord Fitzgerald in *The Ceto*, 14 App. Cas. 670, 691. See also *The Dordogne*, 10 P. D. 6.

(*p*) See *supra*, p. 316.

(*q*) *Little* v. *Burns*, *The Owl* and *The Ariadne*, 9 Ct. of Sess. Cas. 4th ser. 118.

(*r*) 5 App. Cas. 876; see below, p. 424.

Article 23.

reverse his engines, where there is risk of collision, takes upon himself a heavy responsibility. The requirements of the law in this matter can only be appreciated by a careful examination of the cases.

The Jesmond and *The Earl of Elgin.*

It was held by the Privy Council that the corresponding Article (Art. 16) of the Regulations of 1863 applied only "when there is a continuous approaching of the two ships;" that the "stop and reverse" and "crossing" rules were to be read together; that, so reading them, it was evident that the duty to slacken or stop and reverse did not necessarily arise at the moment at which the "crossing" rule became applicable; and that if two ships, approaching each other under circumstances such that the "meeting" rule is applicable, port their helms so that there is no longer risk of collision, there is no duty on either ship to slacken, or to stop and reverse (*s*).

This seems to be the effect of the decision in *The Jesmond* and *The Earl of Elgin*. The facts in that case were as follows:—*The Jesmond* was a screw steamship of 589 tons register, in water ballast. *The Earl of Elgin* was a screw steamship of 608 tons register, with a cargo of coals on board. Each ship sighted the other in the open sea at a distance of a mile and a half. They were approaching each other at a joint speed of eight or nine miles an hour, on courses nearly opposite, and nearly end on. *The Jesmond* put her helm to port and brought red to red. She did not slacken her speed, or stop or reverse her engines. It was contended that she ought at the moment when she ported to have slackened her speed. It was held by the Privy Council that, having ported and brought red to red, the original risk of collision was determined, and that she was under no obligation then or afterwards to slacken her speed. This case was followed by the Privy Council in *The Rhondda* (*t*).

The Rhondda.

The circumstances of that case were as follows:—The steamship *Rhondda* rounding Faro Point from the westward, to enter the Straits of Messina, saw the mast-head and red lights of *The Alsace Lorraine* on her starboard bow, distant

(*s*) *The Jesmond* and *The Earl of Elgin*, L. R. 4 P. C. 1; and see *The Milwaukee*, Brown Ad. 313; *The Baltimore*, 34 Fed. Rep. 660.

(*t*) 8 App. Cas. 549.

about a mile. Her helm was put hard-a-port. No order was given to the engines, which were going full speed ahead. The vessels were approaching each other at a combined rate of fifteen miles an hour. Owing to a current, or eddy tide, taking the ship on her starboard bow, she did not properly answer her helm. As soon as this was perceived her engines were stopped and reversed. It was held by the Privy Council that *The Rhondda* was not in fault by the rule laid down in *The Khedive* (*u*), for not stopping and reversing, when the other ship was first seen. If *The Rhondda* had answered her port helm, the risk of collision would have been determined, and she was under no obligation to slacken her speed or to stop and reverse. It was only when the failure of her port helm manœuvre became apparent that the duty to stop and reverse arose. She did then stop and reverse, and was therefore free from blame. In the words of Lord Watson in *The Khedive*, it was a case where the "crossing" rule "could not reasonably be held to apply before the moment at which it was actually obeyed" (*x*). Article 23.

There is some difficulty in reconciling *The Beryl*, decided by the Court of Appeal, with the decisions in *The Jesmond* and *The Rhondda*. In *The Jesmond* it was held that the "meeting" and "stop and reverse" rules were to be read together; in *The Beryl*, Brett, M. R., held that the corresponding Regulations of 1880 (Arts. 16 and 22) were wholly independent of the "stop and reverse" rule (Art. 18), which, he said, "does not in any way modify, clash with, or require to be construed at the same time as, the other rules," but is a wholly independent rule. It applies, like the other rules, at the moment before risk of collision exists, when the position and action of two steamships is such as to involve risk of collision. "It must apply if the circumstances are such that an officer of ordinary skill and care would be bound to come to the conclusion that, if the ships continue to approach each other, there will be risk of collision" (*y*). It does not appear that either *The Jesmond* or *The Rhondda* was cited in *The Beryl*; and it may be doubted whether the

(*u*) 5 App. Cas. 876. (*x*) 5 App. Cas. 902.
(*y*) *Per* Brett, M. R., 9 P. D. 141.

Article 23.

interpretation placed upon the "stop and reverse" rule in *The Jesmond* is not preferable to that adopted in *The Beryl*. The latter case has, however, been followed in the Court of Appeal and House of Lords (z).

The Beryl.

In *The Beryl* it was not held that the duty to stop and reverse, on the part of the one ship, arose at the same moment as the duty to take steps to keep out of the way on the part of the other ship. Thus, Brett, M. R., held that, after it became the duty of *The Abeona* to take precautions, *The Beryl* was not wrong in continuing her course. But before the vessels came within 300 yards of each other (when the collision was inevitable) the "stop and reverse" rule came into operation, and *The Beryl* was in fault for not having stopped and reversed.

The Voorwaarts and *The Khedive.*

The distinction between *The Jesmond* and *The Khedive*, subsequently decided by the House of Lords, should be noted. The facts in *The Khedive* were as follows:—*The Khedive* and *The Voorwaarts* were two ocean steamships of 3,740 and 3,000 tons register respectively. They were proceeding off the coast of Penang at full speed upon nearly parallel and opposite courses, each having the other on her starboard bow, green light to green light. When they were from half to three-quarters of a mile apart *The Voorwaarts* suddenly ported, showing her red to *The Khedive*, and thereby caused risk of collision. The helm of *The Khedive* was put hard-a-starboard. This was held to be a right manœuvre. At the same time the order was given to stand by her engines; a minute and a-half afterwards the engines were stopped and reversed; one and a-half minutes after this the collision occurred. By not slackening her speed or stopping and reversing when the red light of *The Voorwaarts* came into view *The Khedive* infringed the crossing rule. The House of Lords held her in fault under 37 & 38 Vict. c. 85, s. 17. The Court of Appeal had gone into the question whether, having regard to the suddenness of the peril caused by *The Voorwaarts*' change of course, the captain of *The Khedive* had shown want of proper care, skill or nerve in not giving the absolutely right order to the engines for a minute and

(z) *The Dordogne*, 10 P. D. 6; *The Memnon*, 6 Asp. M. C. 488.

Article 23.

a-half after *The Voorwaarts'* red light came into view; the House of Lords held that, having deliberately elected to keep his engines going ahead full speed, and not to stop and reverse, he had infringed the regulations, and was therefore to be deemed in fault under the statute (*a*).

The Benares.

There is difficulty in reconciling the decision in *The Benares* (*b*), a case subsequently decided by the Court of Appeal, with some of the *dicta* of the learned lords who addressed the House in *The Khedive*, and even with the principle upon which the decision in the latter case appears to be founded. But *The Khedive* was before the Court of Appeal in *The Benares*, and the intention of the Court was to decide nothing contrary to *The Khedive*. That case was distinguished as depending upon special and different circumstances. The circumstances differed in this: that in *The Khedive* the not stopping and reversing was wrong, as matter of seamanship, and probably contributed to the collision (see 5 App. Cas. 898, 899); whereas in *The Benares* the departure from the regulations was "the one chance still left of avoiding danger which was otherwise inevitable." The manœuvre adopted—keeping on at full speed—though unsuccessful, was held to be "necessary," and therefore in accordance with Art. 23 of the Regulations of 1884.

At first sight *The Khedive* seems to decide that a steamship will always be held in fault if, having an opportunity to stop and reverse, and not being compelled to keep on by danger other than that of collision, she does not stop and reverse before the collision occurs. But although there are *dicta* in that case pointing to such a conclusion, the decision as applied to the facts of the case does not go so far. If the circumstances are such that departure from the "stop and reverse" rule was necessary within the meaning of the regulations, a ship will not be held to be in fault though she does not stop or reverse before the collision. Such circumstances existed in *The Benares*. A steamship, *The Gerarda*, going seven knots, saw a green light a point on her port bow distant about three-quarters of a mile. Her helm was put to star-

(*a*) 5 App. Cas. 876.
(*b*) 9 P. D. 16. *The Saragossa*, 7 Asp. M. C. 289, seems a similar case.

Article 23.

board, and very shortly afterwards *The Benares* was seen with her port side open and showing no red light. The helm of *The Gerarda* was put hard-a-starboard and the engines kept on full speed. *The Benares* struck *The Gerarda* on her starboard side. It was found that the first starboarding of *The Gerarda* was not wrong, and that after seeing *The Benares'* port side the only chance of escaping collision was for *The Gerarda* to hard-a-starboard and keep on at full speed, as she did. It seems, therefore, that not to stop and reverse when a collision is in fact inevitable, but in the reasonable opinion of the person in charge may possibly be avoided by keeping on full speed, is not an unnecessary departure from the regulations.

The Beryl.

The case of *The Beryl* was as follows:—*The Abeona* and *The Beryl* were steamships crossing at right angles, *The Abeona* having *The Beryl* on her starboard hand. *The Beryl*, when some considerable distance off, whistled twice, and, when from a quarter to half a mile off, eased her engines. At this time *The Abeona* ought to have, but had not, stopped or reversed her engines, or altered her course. Then she eased her engines. If she had not eased there would have been no collision; but by easing she "counteracted *The Beryl's* manœuvre." When the vessels were so close that a collision was inevitable—about 300 yards apart (*c*)—both stopped and reversed. It was held by Butt, J., that *The Abeona* had been wrongly manœuvred from first to last, and that *The Beryl* had been "properly navigated according to the regulations" (*d*). It will be observed that *The Beryl* did not reverse her engines until the collision was inevitable. Upon appeal the decision of Butt, J., as to *The Beryl*, was reversed. The Court of Appeal held unanimously that the duty of *The Beryl*, under Art. 18, was not fulfilled by slackening her speed at the time of her whistling the second time; and that her duty was to have stopped and reversed her engines at some time between the second whistling and the moment at which the collision became inevitable.

The Memnon.

In the case of *The Memnon* (*e*), that vessel was held to

(*c*) See the report of the case on appeal, 9 P. D. 137, 142.

(*d*) 9 P. D. 4.

(*e*) 6 Asp. M. C. 317, 488. As

Article 23.

blame for a collision with *The San Salvador*. They were steamships crossing nearly at right angles. *The San Salvador*, though she had *The Memnon* on her own starboard bow, took no step to avoid collision until she was within three ships' lengths of her, when she starboarded. The course and speed of *The Memnon* were such that, had *The San Salvador* kept her course, *The Memnon* would have passed ahead of her without collision, and *The Memnon* stopped her engines as soon as *The San Salvador* starboarded. It was held that *The Memnon*, as well as *The San Salvador*, was to blame; that those on board her were not justified under the circumstances in assuming that *The San Salvador* would do what was right; that they ought to have seen that the courses of the two vessels involved risk of collision, and accordingly that they ought to have slackened her speed or stopped and reversed earlier. Under the present regulations *The Memnon* would, it seems, have been free from blame.

The Arratoon Apcar.

A steamship, A., by porting to another, B., that was approaching her with all her lights showing, shut in the green light of B.; but B. by perverse starboarding brought her green again into view; thereupon A. again ported and shut in B.'s green; B., continuing to starboard, again brought her green into view, and a collision followed. It was held, under the Act of 1873, that A. was in fault for not having stopped and reversed before the collision (*f*).

The Stanmore.

In *The Stanmore* the duty to stop and reverse, and not to stop only, was insisted upon. There the alteration of the other ship's course at the distance of a quarter of a mile was indicated by the apparent closing of the masthead and side light (*g*).

The Thames and *The Lutetia.*

In *The Thames* and *The Lutetia* a vessel was held in fault for not having stopped and reversed "when the risk of collision must have been apparent" (*h*).

to assuming that the other vessel will do the right thing, dist. *Wilson* v. *Currie*, (1894) App. Cas. 116.

(*f*) *The Arratoon Apcar*, 15 App. Cas. 37.

(*g*) *The Stanmore*, 10 P. D. 134. As to the closing of the lights indicating a change of course, see above, p. 385.

(*h*) *The Thames* and *The Lutetia*, 9 App. Cas. 640, 651. Cp. *The Nord Kap* and *The Sandhill*, (1894) App. Cas. 646.

Article 23.

So, in America, where two steamships, *The C.* and *The M.*, were approaching one another on nearly parallel opposite, but slightly converging lines, and in a position to pass clear, *The C.* ported and ran across *The M.*, rendering collision imminent, and *The M.* did not slacken, signal, or reverse till after the porting of *The C.* It was held that *The M.* as well as *The C.* was to blame, the Court saying that there was such uncertainty in the movements of *The C.* as called for the closest watch and the highest diligence (*i*).

The Libra.

A., a steamship rounding Tilbury Ness in the Thames, under a port helm, was approaching another, B., on the other side of the point in such a position that, if she had not been under a port helm, there would have been risk of collision; it was held by Brett, L. J., that it was not the duty of A. to stop and reverse under one of the Thames Rules, which is very similar in terms to Art. 23 (*k*).

Application of Art. 23 in a fog.

Under former regulations there are many decisions as to the duty of a steamship in a fog, hearing the whistle of another which she cannot see. The question will arise, how far are these decisions applicable under the existing Art. 23? It has been already pointed out that the corresponding Article of former regulations (cf. Art. 18 of 1884) applied to both ships; the present Art. 23 applies only to the ship "which is directed by these rules to keep out of the way." It has been held that the obligation to stop and reverse does not arise until the circumstances are known and the necessity is apparent (*l*); and the reasoning upon which these decisions were founded is applicable to the existing Art. 23. It would seem, therefore, that under the present law the duty to stop and reverse does not arise (*m*) until the ships are in sight of each other, or until the course of the ship, whose duty it is to keep her course, is clearly indicated to the other by the different directions in which her whistle is haard.

The application of the "stop and reverse" rule of former regulations to a steamship hearing the fog-horn or whistle

(*i*) *The Manitoba*, 15 Davis, U. S. 97.
(*k*) 6 P. D. 139.
(*l*) *Supra*, pp. 46, 47.
(*m*) Except, possibly, in the case of a steamship hearing the fog-horn of a sailing-ship close to her and forward.

Article 23.

of another ship in a fog has been the subject of many important decisions in the past. It is, in view of the present Art. 16 and decisions thereon, unnecessary to do more than summarise the result of these older decisions.

Thus, according to these older cases, a steamship in a fog, hearing the whistle of another steamship approaching, was bound to bring herself to a standstill, at the latest when the ships were within hailing distance, though she was not bound to stop and reverse her engines as soon as she heard the whistle of another (*n*). Where two steamships were approaching each other with the risk of collision, and one of them, by altering her course, determined the risk, the regulations did not require her to stop or reverse (*o*); but if the risk was not in fact determined, although the course might have been altered, then it became incumbent upon her to stop and reverse (*p*). Where an omission to stop and reverse might by possibility have contributed to the collision, then the guilty of such omission was in fault, though those on board showed no want of ordinary skill, care, or nerve (*q*). On the other hand, failure to stop and reverse was not deemed a fault unless the officer knew, or ought to have known, that the regulation in question was applicable (*r*). Where to keep going ahead was the one and only chance of escaping collision, a circumstance was considered to exist which justified the not stopping and reversing (*s*). A vessel was liable to be held at fault where, although she slackened her speed, she did not stop and reverse until collision was inevitable, if she had had an opportunity of doing so (*t*). It was considered the proper course for a vessel hearing the fog signal of another forward of her beam, the position of which was not ascertained, to

(*n*) *The Frankland* and *The Kestrel*, L. R. 4 P. C. 529; *The Jesmond* and *The Earl of Elgin*, L. R. 4 P. C. 1; *The Love Bird*, 6 P. D. 80; *The Dordogne*, 10 P. D. 6; *The Kirby Hall*, 8 P. D. 71; *The Ceto*, 14 App. Cas. 670, 695; *The Ebor*, 11 P. D. 25; *The Harton*, 9 P. D. 44.

(*o*) *The Jesmond*, *supra*.

(*p*) *The Ceto*, *supra*; see also *The John M'Intyre*, 9 P. D. 135, 139; *The Martello*, 46 Davis, 64; *Fabre* v. *Cunard S.S. Co.*, 53 Fed. Rep. 288; *The Britannic*, 39 Fed. Rep. 395; *Donnell* v. *Boston Towboat Co.*, 89 Fed. Rep. 757; *The City of Atlanta*, 26 Fed. Rep. 456.

(*q*) *The Khedive*, 5 App. Cas. 876.

(*r*) *The Khedive*, *supra*; *The Beryl*, 9 P. D. 4; *The Ceto*, *supra*; *The Theodore H. Rand*, 12 App. Cas. 247; *The Memnon*, 6 Asp. M. C. 488; *The Emmy Haase*, 9 P. D. 81.

(*s*) *The Rosetta*, 6 Asp. M. C. 310.

(*t*) *The Ceto*, *supra*; *The Beryl*, *supra*.

Article 23.

stop and proceed with caution, although not enjoined to do so by the rules (*u*).

Art. 23 is not infringed unless there is an opportunity of obeying it.

Art. 23 does not require a steamship to slacken and reverse at the very moment when danger arises. "A man must have time to consider whether he should reverse or not. The Court is not bound to hold that a man should exercise his judgment instantaneously. A short, but a very short, time must be allowed him for this purpose" (*v*). But it is, of course, not an excuse for non-compliance with Art. 23 that the time which elapsed between the risk of collision becoming apparent and the collision was so short that the engines could not reasonably have been stopped and reversed, if the shortness of the time was due to want of a proper look-out. Thus, where it was proved that more than half-a-minute must have elapsed from the red light of an approaching steamship, A., coming into view on the starboard bow of the other, B., had a good look-out been kept on board B., B. was held in fault for not having reversed before the collision. If the red light had, in fact, been visible for only half-a-minute before the collision, it seems that the vessel would not have been held in fault for not stopping and reversing in so short a time (*x*).

Object of Art. 23 is to minimize damage as well as to prevent collision.

It appears that neglect to obey Art. 23 will cause a ship to be held in fault, if the omission, though it could not have contributed to the collision, might have caused or contributed to the damage (*y*). And in *The Voorwaarts* and *The Khedive*, Lord Watson said that the rule (Art. 16 of the Regulations of 1863) was enacted "with a view to obviate the risk and minimize the results" of a collision (*z*).

Compliance with Article by trawler at work.

A paddle-wheel steam trawler, going through the water (*a*) one or one-and-a-half knots with her trawl down, saw a sailing ship approaching her with both her side lights open for ten or twelve minutes. She stopped without reversing her engines as soon as danger became imminent. It was assumed by

(*u*) *The Rosetta*, 6 Asp. M. C. 310.

(*v*) *Per* Butt, J., *The Emmy Haase*, 9 P. D. 81; followed in *The Ngapoota*, (1897) App. Cas 391; see also *Windham and Others* v. *Robertson*, Sc. Law Rep. xlii. 602; and see *per* Brett, M. R., *The Beryl*, 9 P. D. 137, 138; *The Hubbuck*, Ad. Div. 28th June, 1887.

(*x*) *The Emmy Haase*, *supra*.

(*y*) *The Thames* and *The Lutetia*, 9 App. Cas. 640, 649, 652.

(*z*) 5 App. Cas. 903, 901.

(*a*) *The Tweedsdale*, 14 P. D. 164. That she was going through the water is clear from the facts.

Article 23.

Butt, J., that the "stop and reverse" rule applied to her (*b*), and he held that she had complied with it.

Though Art. 23 does not apply to sailing ships, it has been said that a sailing ship in a fog, or under circumstances similar to those in which Art. 23 applies, is under a corresponding obligation to shorten sail and reduce her speed as much as possible (*c*).

The burden is upon a vessel that does not obey Art. 23 to show why she did not do so.

Where a steamship that is required by the regulations to keep out of the way has been in collision, and it is proved or admitted that she did not before the collision stop or reverse, it seems that the burden is on her to show why she did not comply with Art. 23. This burden she may discharge by showing that she was unable, or had not the opportunity, to stop and reverse (*d*), or that the omission to do so was the only chance of escaping collision (*e*).

In America, it has been held by the Supreme Court that the rule requiring a steamship to slacken does not apply where, if both ships continue their courses, they will pass clear, although, if either deviates from her course, there will be risk of collision (*f*).

Overtaken steamship.

A steamship being overtaken by another vessel is not "approaching" the overtaking ship within the meaning of Art. 23. Her duty, therefore, is to keep her course and speed under Art. 21, and not to slacken under Art. 23, for that Article does not apply to her (*g*).

Engines not to be set on ahead until risk is over.

To comply with Art. 23, a vessel must not only slacken or stop, but she must not set her engines ahead again until the risk of collision is past (*h*).

Duty to stop or ease the engines where the other ship's lights

If a steamship sights another, and cannot make out what course she is upon, it is her duty at once to slacken until she can ascertain what the stranger's course is, so that she may

(*b*) At least as regards stopping. As to reversing, probably she could not with safety, because of her trawl warp.

(*c*) See *per* Brett, M. R., *The Dordogne*, 10 P. D. 6, 12, and see *supra*, p. 381.

(*d*) See *The Khedive*, 5 App. Cas. 876, 902.

(*e*) *The Benares*, 9 P. D. 16.

(*f*) *The Free State*, 1 Otto, 200; Brown, Adm. 251. See, however, *The Manitoba*, 15 Davis, 97.

(*g*) *The Franconia*, 2 P. D. 8.

(*h*) In *Dowell* v. *General Steam Navigation Co.*, 5 Ell. & B. 195, under the old law, it was held that a ship was in fault if she did not continue to exhibit a light so long as danger of collision existed.

Article 23. or course cannot be made out.

be able to take the measures required by the regulations (*i*); and she must do so before altering her helm, or taking any decisive step; for if she does not, and by altering her helm without knowing the other ship's position and course, causes a collision, she will be held to be in fault (*k*).

Speed of a steamship approaching other craft.

Apart from the regulations, where there is probable danger in clearing other craft, it is negligent for a steamship to approach them, without slackening, at a high rate of speed. In America it has been held by the Supreme Court that a large steamer approaching a tug with a number of barges in tow, and surrounded by other vessels, was bound to slacken, and not "hurl herself like a projectile in the midst of them" at the rate of seventeen miles an hour, taking the chance of clearing them (*l*). And in another case it was held by the same Court that a large steamer entering a harbour or narrow channel was bound to go at such speed as is consistent with the safety of other vessels (*m*).

A steamship in the North Sea on a clear night, going eight or nine knots over trawling ground, and running into a smack which showed no light astern, was held not to be in fault for going too fast (*n*). In an early case (*o*), it was held that, on a dark night in the Bristol Channel, ten knots was an improper speed for a steamship.

Stopping and reversing not always a prudent measure.

In applying Art. 23 it must be borne in mind that reversing the propeller, whilst the ship has headway through the water, always diminishes the turning power of the helm. In the case, therefore, of a screw steamship stopping and reversing her engines it is not always a necessary, or even a prudent, step for her to take when at close quarters with another ship. On the other hand, the common excuse that the engines were not stopped and reversed because of the deadening effect of the reversed propeller upon the port helm is viewed by the Court with suspicion (*p*).

(*i*) *The Rona* and *The Ava*, 2 Asp. M. C. 182; *The General Lee*, 19 L. T. 750.

(*k*) *The Bougainville* and *The Jas. C. Stevenson*, L. R. 5 P. C. 316. As to ships in a fog, see *The Frankland*, L. R. 4 P. C. 529; *The Kirby Hall*, 8 P. D. 71.

(*l*) *The Syracuse*, 9 Wall. 672; followed in *The Lucy*, 74 Fed. Rep. 572.

(*m*) *The City of Paris*, 9 Wall. 634; and see *The Corsica*, 9 Wall. 630.

(*n*) *The Pacific*, 9 P. D. 124.

(*o*) *The Rose*, 2 W. Rob. 1.

(*p*) As in *The Arratoon Apear*, 15 App. Cas. 37.

Article 23.

Effect of reversed screw whilst the ship has headway.

It may be convenient here to state shortly the effect, under ordinary circumstances, of reversing the propeller, whilst the ship has headway through the water, an effect which must always be taken into consideration in determining the application of Art. 23. The behaviour of a steamship under these circumstances was not so generally known in the year 1862, when the "stop and reverse" rule was framed, as it is at the present day. The propeller exerts considerable turning power on the ship, whether going ahead or astern, but more particularly when going astern (*q*). The effect is most strongly marked when the propeller is going astern and the ship has headway through the water, the circumstances under which Art. 23 is usually applicable. The turning effect is in the one direction or the other, according as the screw is right or left-handed. A right-handed screw revolves, when the engines are going ahead, viewed from astern, from left to right; a left-handed screw from right to left. When the screw is not deeply immersed, and froths air into water, it exerts, when reversed, considerable power to turn the ship's head independently of the rudder, the ship turning to starboard or port, almost irrespective of the helm (*r*), according as the screw is right or left-handed. This effect is produced even whilst the ship has headway through the water; it increases as the ship's way is stopped. It sometimes nearly disappears when the screw is so deeply immersed that it does not churn air into water (*s*). Under the same circumstances —that is to say, whilst the ship has headway through the water, and the engines and screw are working astern—the action of the rudder is the reverse of that which it has whilst the engines and screw are going ahead. This reverse action of the rudder is always feeble, and is different for different ships, and even for the same ship under different conditions of loading. When there is wind sufficient to heel the ship,

(*q*) This seems to depend upon the fact that the lower blades of the propeller being more immersed have a greater turning power than the upper.

(*r*) See an account of experiments with *The Tabor*, Nautical Mag. 1880, p. 323.

(*s*) This is not the case with all ships. The writer has seen a loaded steamship backed out from alongside a wharf and turned at right angles to it almost entirely by the action of her reversed propeller.

Article 23.

the advancing end of the ship, whether head or stern, will always seek, or fly up into, the wind.

The combined influences of (1) the reversed screw, (2) the wind, and (3) the rudder, severally acting in the manner above described, determine the course of the ship until her way is stopped. Their utmost effect, when all acting in the same direction (*e.g.*, screw, right-handed; helm, starboard; wind, on the starboard side), is small compared with the influence which the rudder exerts when the ship and engines are going full speed ahead. A circle of at least double the radius of that in which the ship will turn, when going ahead, is required for her to turn in when the engines are going astern under the circumstances above described. So marked is this diminution in the turning capability of a ship with her screw suddenly reversed from full speed ahead, that, under some circumstances, a vessel running at right angles upon a straight coast at full speed might avoid going ashore, by keeping on full speed ahead with her helm hard over, when she could not keep off the shore by stopping and reversing her engines.

It follows from the general rules above stated that, with engines going astern whilst the ship has headway through the water, the position and direction of the rudder with reference to the ship's keel is of paramount importance. Under such circumstances, a vessel with a right-handed screw will turn her head much quicker to starboard (her helm being to port, and her engines reversed) than it is possible for her to turn her head to port; and *vice versâ* with a left-handed screw (*t*).

(*t*) The authority for most of the statements in the text is the Report, published in 1875, of a Committee (J. R. Napier, Esq., Sir W. Thompson, W. Froude, Esq., J. T. Bottomly, Esq., and Professor Osborne Reynolds) appointed by the British Association to investigate the effect of propellers upon the steering of vessels. Further information upon the subject will be found in Naval Science, 1873, p. 89; Nautical Magazine, 1879, pp. 529, 608; *ibid* 1880, p. 323; Transactions of the Institute of Naval Architects, 1879, a paper by A. J. Maginnis, Esq. In connection with this subject, the following facts, collected from the above sources, may be not without interest: A screw steamship usually answers one helm quicker than the other, whether going ahead or astern; but different ships behave differently in this respect. When just starting, a steamship will answer her starboard helm quickest if her screw is right-handed, and her port helm if her screw is left-handed. When going ahead at a moderate or full speed she answers her port helm quickest with a right-handed, and her starboard helm with a left-handed screw. In a note to *The Normandie*, 43 Fed. Rep. 161, 162, are given the results

Article 24.

Article 24.
Overtaking ship.

Notwithstanding anything contained in these rules, every vessel, overtaking any other, shall keep out of the way of the overtaken vessel.

Every vessel coming up with another vessel from any direction more than two points abaft her beam, i.e., *in such a position, with reference to the vessel which she is overtaking, that at night she would be unable to see either of that vessel's side lights, shall be deemed to be an overtaking vessel; and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these rules, or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.*

As by day the overtaking vessel cannot always know with certainty whether she is forward of or abaft this direction from the other vessel, she should, if in doubt, assume that she is an overtaking vessel, and keep out of the way.

This Article corresponds with Art. 20 of the Regulations of 1884. The wording is slightly different, but the effect seems to be precisely the same. The opening words of the Article, "Notwithstanding . . .," were originally (*u*) inserted in order to make it clear (1) that Arts. 20 and 24 do not conflict; that a sailing ship overtaking a steamship is to keep out of the way of the latter; and also (2) that the overtaking vessel is to keep out of the way of the other, although she is crossing the course of the latter (*x*). The definition of an "overtaking" ship is new; but, although never before stated in the regulations, it merely formulates the dicta of the judges and decisions of the Courts (*y*).

of experiments as to the stopping and turning capabilities of an Atlantic liner.

(*u*) In the Regulations of 1880.

(*x*) In these cases there was an apparent conflict between Art. 15 and Art. 17 of the Regulations of 1863. See *The Philotaxe*, 3 Asp. M. C. 512; *The Wheatsheaf* and *The Intrepide*, 13 L. T. 612; and between Art. 12 and Art. 17. See *The Peckforton Castle*, 2 P. D. 222; 3 P. D. 11; *The Franconia*, 2 P. D. 8; *The Aurania* and *The Republic*, 29 Fed. Rep. 98.

(*y*) See *The Franconia*, 2 P. D. 8, 12; *per* Lord Herschell, *The Main*, 11 P. D. 132, 139. The observations of Sir R. Phillimore in *The Breadalbane*, 7 P. D. 186, as to the "crossing" rule prevailing over the overtaking rule, and of members of

Article 24.

The overtaking ship must, if circumstances permit, under Art. 22, pass astern and not ahead of the other. The latter must, under Art. 21, not alter her course or speed.

Article 10 (*supra*, p. 358) requires a ship that is "being overtaken" to show a light astern. The phrases "overtaking" and "being overtaken" appear to be correlative (*z*).

The Molière (*a*) is a recent decision showing that under the Regulations of 1884 the duty of the overtaking vessel to keep out of the way did not cease until, in the words of the present Art. 24, "she is finally past and clear."

Under a provision of the Tyne bye-laws, that "when steam vessels are proceeding in the same direction, but with unequal speed, the vessel which steams slowest shall, when overtaken," take certain steps to enable the other to pass, it was held by the Privy Council that this rule applied only to a vessel overtaking and passing another actually on the same course as herself (*b*).

In *The Cayuga* (*c*), the Supreme Court of the United States expressed an opinion that a vessel was "overtaking" another within the meaning of Art. 17 of the Regulations of 1863 only when astern of the other and pursuing the same general direction. In that case it was held that two steamships on intersecting courses (S. by E. and S.S.W.) were crossing ships, although one was abaft the beam of, and going faster than, the other. As stated above (p. 404), this case would not be followed in this country, and is inconsistent with other American decisions (*d*).

The rule, that an overtaking ship must keep out of the way of a ship ahead, was a rule of the maritime law, and was merely formulated by the Regulations of 1863 (*e*). It clashed, however, with the other equally well-established rule,

The rule, that an overtaking ship must keep out of the way, is a rule of the maritime law.

the Court of Appeal in *The Peckforton Castle*, 3 P. D. 11, doubting the correctness of the above definition of "overtaking," may now be set aside; as also the cases of *The Chanonry*, 1 Asp. M. C. 569, and *The Broadalbane*, 7 P. D. 186, so far as they bear upon the question as to what is an "overtaking" ship.

(*z*) But see *The Main*, 11 P. D. 132, where the definition by Fry, L. J., of a ship that is "being overtaken" is wider.

(*a*) (1893) P. 217; cf *The Narragansett*, 10 Blatchf. 475.

(*b*) *The Henry Morton*, 2 Asp. M. C. 466.

(*c*) 14 Wall. 270, 277.

(*d*) *The Oceanus*, 5 Bened. 515. See also *The Governor*, Abbott, Ad. 108; *The Rhode Island*, Olcott, 505; 1 Blatchf. 363.

(*e*) *Whitridge* v. *Dill*, 23 How. 448.

Article 24.

that a ship with the wind free must keep out of the way of another close-hauled. In an American case, where a brig and a schooner were upon converging courses, the schooner overtaking the brig, it was held that the brig was in fault for not keeping out of the way, she having the wind free. It was said that, if she had been close-hauled, it would not have been her duty to keep out of the way (*f*). Under the existing law, a sailing ship overtaking another must keep out of the way, though she is close-hauled, and the other is free.

A ship cannot, it seems, be an "overtaking" ship unless she is going faster than the ship ahead (*g*).

Duty of overtaken ship.

Where the overtaking ship was on the quarter of the ship ahead, and the latter altered her course so as to give the other ship more room, it was held that she did not thereby depart from the regulations, so as to be held in fault for a collision which followed (*h*). If an overtaken ship is compelled to alter her course in order to avoid another ship, or for any other reason, she must not alter more than is necessary (*i*); otherwise she will fail to justify her alteration under Art. 27, and will be held in fault under the statute for infringing the regulations.

A ship that was being overtaken wilfully obstructed the other. It was held (in America) that she was alone in fault, although there was some negligence in the other ship (*k*).

"Shall keep out of the way."

The words "shall keep out of the way" have given rise to a difference of judicial opinion in a case where the leading ship had altered her course. In such a case, Lord Esher, M. R., and Lopes, L. J., thought that no more was required of the overtaking ship than ordinary care, and that if, using such care, she nevertheless failed to keep out of the way, she would not be held in fault for an infringement of the Article. Kay, L. J., thought, on the other hand, that the obligation on her is absolute, and that, unless she proved that the action of the leading ship made the collision inevitable, or unless

(*f*) *The Clement*, 1 Sprague, 257; 2 Curtis, 363. The Supreme Court was equally divided.
(*g*) *The Franconia*, 2 P. D. 8.
(*h*) *The Franconia*, 2 P. D. 11.
(*i*) *The Saragossa*, 7 Asp. M. C. 289.
(*k*) *Gaffner* v. *Pigott*, 116 Fed. Rep. 486.

Article 24.

she brought herself within the saving words of Art. 27, she must be held in fault (*l*).

Sailing trawler at work.

Notwithstanding the wording of Art. 26, it would probably be held that a steamship overtaking a sailing trawler at work is required by Art. 24 to keep out of her way; and that a sailing ship overtaking a sailing trawler at work is required both by Art. 24 and Art. 26 to keep out of her way.

The duty of the ship which is being overtaken to show a light astern is considered in a previous Article.

It is the duty of a steamship overtaking a sailing ship to keep out of the way of the latter, both by virtue of Art. 20 and Art. 24.

The following cases illustrate the application of Art. 24:—

Cases illustrating the application of Art. 24.

A steamship attempted to pass a sailing ship turning up the Thames against a head wind. Owing to the latter going about when she got to the edge of the tide, the steamer ran into her. It was held that the sailing ship was under no obligation to give notice that she was going about, and that the steamer in attempting to pass did so at her own risk (*m*).

Where a sailing ship, A., with the wind free, was approaching another, B., hove-to, and driving to leeward in such a direction that her side lights were not for some time visible to A., it was held that it was the duty of A. to keep out of the way (*n*). It does not appear whether the decision was on the ground that A was "overtaking" B., or that A. was "crossing" B. and to windward of her, with the wind on the same side, or whether it was A.'s duty to keep out of the way because she was going free and the other ship hove-to.

When two ships turning to windward in narrow waters are close-hauled on the same tack, one following in the wake of the other, if the leading ship goes about, and the following ship cannot stand on without risk of collision, it is the duty of the latter to keep out of the way of the ship ahead by going about (*o*).

(*l*) *The Saragossa*, 7 Asp. M. C. 289.

(*m*) *The Palatine*, 1 Asp. M. C. 468.

(*n*) *The Eleanor* v. *The Alma*, 2 Mar. Law Cas. O. S. 240.

(*o*) *The Priscilla*, L. R. 3 A. & E. 125; but see *The Annie*, (1909) P. 176.

Article 24.

If two ships are turning to windward, and the one ahead, instead of going about, wears, it seems that, whilst she is in the act of wearing and approaching the ship astern, the latter is not an "overtaking" ship, and that she is not required to keep out of the way (*p*).

The Seaton and *The Polcevera* were on nearly parallel (S.W. by W., about) courses, *The Polcevera* being abaft the starboard beam of *The Seaton* and overtaking her. When the ships were three or four miles apart, *The Polcevera* altered her course to S. ½ W., thereby causing risk of collision. It was held that she was in fault for a collision that followed (*q*).

American cases.

The following American cases illustrate the application of Art. 24:—

A schooner luffing up to come to an anchor, when a short distance ahead of a steamship, was held not to be in fault for a collision which followed (*r*).

The principle that an overtaking ship does not cease to be bound to keep out of the way until she is past and clear of the other ship was applied in the case of the overtaking ship rounding to, to come to an anchor (*s*).

Two tugs were racing (twelve knots) for a schooner. One was overtaking the other, and, before she was clear, attempted to cross her, and so forced her into collision with the schooner. The overtaking tug was held alone in fault (*t*).

Two ships were working to windward in company, one overtaking the other. The leading ship went about, and the overtaking ship did the same, but missed stays and took a stern board into the other. The overtaking ship was held alone in fault for standing too close to the other (*u*).

A collision occurred between an overtaking steamship and a tug just cast off from the ship ahead, alongside which she had been lashed. The overtaking steamship had not, in accordance with the law in America, signalled her intention

(*p*) *The Falkland* and *The Navigator*, Br. & Lush. 204.

(*q*) *The Seaton*, 9 P. D. 1: cf. *Ueberweg* v. *La Compagnie Générale Transatlantique*, 60 Fed. Rep. 461.

(*r*) *The Helen Keller*, 50 Fed. Rep. 142.

(*s*) *The Bendo* and *The Sampson*, 44 Fed. Rep. 439.

(*t*) *The Jesse Spaulding*, 50 Fed. Rep. 583. Cf. *The Sandhill*, (1894) App. Cas. 646.

(*u*) *The Stephen Bennett*, 54 Fed. Rep. 207.

Article 24. of passing the ship ahead. It was held that she was in fault for the collision, although, until the tug cast off, she was not aware of the presence of the tug (*x*).

A vessel was held in fault for attempting to pass another ahead in a channel so narrow that there was risk in making the attempt (*y*).

The rule has been held to apply in a case where the overtaken vessel was going astern (*z*).

Article 25.

Article 25. *In narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel.*

This Article corresponds with Art. 21 of the Regulations of 1884, from which it differs only verbally.

The Article is substantially the re-enactment of a rule which, having been in force from 1840 to 1862, was in that year repealed. By 9 & 10 Vict. c. 100, s. 9, steamships were required to keep on the starboard side of mid-channel, "due regard being had to the tide and the position of each vessel in such tide." In *The Leith* (*a*), this was interpreted to mean that a ship was to keep on the starboard side, "provided it may be done with convenience and safety" to the other vessel. By subsequent Acts (14 & 15 Vict. c. 79, s. 27, and 17 & 18 Vict. c. 104, s. 297) the rule was re-enacted with the omission of the words as to having regard to the tide. In several cases (*b*) decided under these Acts, it was held that no practice of the river as to ships keeping in or out of the strength of the tide, and no considerations of con-

(*x*) *Robinson* v. *Detroit, &c. Steam Nav. Co.*, 73 Fed. Rep. 883.

(*y*) *The City of Paris*, 1 Boned. 174; 9 Wall. 634; *The Narragansett*, 10 Blatchf. 475; *The Nova Scotia* and *The Quebec*, 2 Quebec L. R. 1; *The Farewell*, 8 Quebec L. R. 87.

(*z*) *The Sicilian Prince*, 128 Fed. 133.

(*a*) 7 Not. of Cas. 137.

(*b*) *The Duke of Sussex*, 1 W. Rob. 274; *The Sylph*, 2 Sp. 75; *The Panther*, 1 Sp. 31; *The Malvina*, 1 Moo. P. C. N. S. 357; *The Mœander* and *The Florence Nightingale*, *ibid.* 63; *The Seine*, Swab. 411; *The Hand of Providence*, *ibid.* 107; *The Unity*, *ibid.* 101; *The Nimrod*, 15 Jur. 1201, are decisions under the starboard side rule of former Acts. Cf. *Occidental, &c. Co.* v. *Smith*, 74 Fed. Rep. 261.

Article 25.

venience, would justify a deviation from the express enactment as to keeping on the starboard side. By 25 & 26 Vict. c. 63, s. 2, the starboard side rule was repealed, and from 1862 to the 1st of September, 1880, vessels were free to navigate on either side of rivers, except in certain waters where a special rule was in force under local Acts. Such special rules are now in force in the Mersey, the Clyde, the Tyne, the Tees, and in Cork or Queenstown harbour (*c*); also in the Danube (*d*). Vessels entering Sorel harbour are required to keep on the port side (*e*).

Consequence of navigating on the wrong side of a narrow channel.

The re-enactment of the starboard side rule and its insertion in the regulations are of the utmost consequence to seamen. Any person in charge of a ship who navigates her on the wrong side of a narrow channel, besides being guilty of a misdemeanor, will almost inevitably subject himself and his owners to liability for any collision occurring when he is on his wrong side, unless it is proved that his being on the wrong side was unavoidable (*f*).

What is a "narrow channel"?

There is considerable difficulty in defining a "narrow channel." A "narrow channel" need be of no particular length, and may be formed by extremities of two breakwaters at the entrance to a harbour (*g*). The rule has been applied to the Straits of Messina (*h*); the Swin, at the Middle Light (*i*); the entrance of Falmouth harbour (*k*); the Cardiff drain at its junction with the entrance channel to the Roath basin (*l*); the Scheldt at Antwerp (*m*); the Golden Gate entrance to San Francisco harbour (*n*); the channel leading to the inner harbour, Sydney, N. B. (*o*); the River Humber between the Bull

(*e*) See Appendix for some of these rules. For an application of the Tees rule, see *The Mary Lohden*, 6 Asp. M. C. 262.

(*d*) *The Tourra* and *The Spearman*, 10 App. Cas. 276; *The Clieveden*, (1894) App. Cas. 625.

(*e*) 42 Vict. c. 29 (Canada) Art. 28.

(*f*) 57 & 58 Vict. c. 60, s. 419.

(*g*) Cf. *per* Alverstone, C. J., in *The Kaiser Wilhelm der Grosse*, (1907) P. 259, at pp. 263, 264.

(*h*) *The Rhondda*, 8 App. Cas. 549.

(*i*) *The Minnie*, (1894) P. 336; *The Corennie*, *ibid.* p. 338, note. But, owing to an alteration in lights, the whole breadth of the Swin is now the channel. See *The Oporto*, (1897) P. 249.

(*k*) *The Clydach*, 5 Asp. M. C. 336.

(*l*) *The Leverington*, 11 P. D. 117.

(*m*) *The Whitlieburn*, 9 Asp. M. C. 154. The rule was assumed to apply here.

(*n*) *Occidental, &c. Co.* v. *Smith*, 74 Fed. Rep. 261.

(*o*) *The Cuba* v. *McMillan*, 26 Sup. Ct. (Canada) 651. The rule also applies to the Narrows at Vancouver, *Bryce* v. *C. P. Ry. Co.*, 13 Brit. Col. Rep. 446.

Article 25.

and Clee Ness buoys on the south side and the buoys on the north side (*p*); Queenstown harbour (*q*); the entrance to Cherbourg harbour (*r*); the entrance channel formed by the east and west pier at Swansea (*s*); the Firth of Forth from the Forth Bridge upwards (*t*); and the northern entrance to the Great Bitter Lake in the Suez Canal (*u*). On the other hand, an outward part of the sea channels at the entrance of the Mersey (*x*); the harbour of Lerwick inside its northern and southern entrances (*y*); and the Sound, six miles wide, outside the western entrance to Vineyard Sound on the American coast (*z*), have been held not to be narrow channels (*a*).

Meaning of "fairway," "mid-channel."

Under the earlier Act there was considerable discussion as to the meaning of "mid-channel" (*b*). In the present Article "fairway or mid-channel" would appear to mean the deep water channel navigable for heavy ships. It would seem that it is to the starboard side of the centre of such deep water channel that vessels, both those navigating within the deep water channel and those navigating in waters which, although outside of the deep water channel, are, however, comprised within the "narrow channel," must keep (*c*).

"Safe and practicable."

The words "when it is safe and practicable" qualify the rule; but probably they have no further effect than the saving clause of Art. 27 (*d*). Probably they would apply to a steamship on her right side of the channel falling in with a sailing ship on her wrong side, so as to require the steamship

(*p*) *The Ashton*, (1905) P. 21.

(*q*) *The Glengariff*, (1905) P. 106.

(*r*) *The Kaiser Wilhelm der Grosse*, (1907) P. 259.

(*s*) *The Prince Leopold de Belgique*, (1909) P. 103.

(*t*) *Kerr* v. *Screw Collier Co., Ltd.*, (1909) Sess. Cas. 561.

(*u*) *The Knaresbro*, (1907) P. 38, note.

(*x*) *The Meander*, 1 Moo. P. C. N. S. 63 (under a former Act).

(*y*) *The Seymolicus*, (1909) P. 109.

(*z*) *Donnell* v. *Boston Towboat Co.*, 89 Fed. Rep. 757.

(*a*) For decisions as to the application of this rule to waters in the neighbourhood of New York, see *The Islander*, 152 Fed. 385; *The Wrestler*, 144 Fed. 334 and 153 Fed. 973. The application of the rule to Lowestoft North Roads has not been decided, see *The Try Again*, Ship. Gaz., June 2nd, 1908.

(*b*) *Smith* v. *Voss*, 2 H. & N. 97.

(*c*) *The Glengariff*, *supra*. It may be noted that "fairway" has been defined in respect of Rule 38 of the Thames Rules. "Wherever there is an open navigable passage used by vessels proceeding up and down a river or channel, that may be said to be a fairway." *Per* Bruce, J., in *The Blue Bell*, (1895) P. 242, at p. 246. This definition was accepted in *The Clutha Boat* 147, (1909) P. 36.

(*d*) See *The Try Again*, *supra*. As to the meaning of these words in former Acts, see *The Unity*, Swab. 101; *The Hand of Providence*, *ibid.* 107; *The Nimrod*, 15 Jur. 1201; *The Panther*, 1 Sp. 31.

to keep out of the way of the sailing ship in compliance with Art. 20, notwithstanding the fault of the latter in being on her wrong side. The same observation applies in the case of an overtaking ship or any other ship whose duty it is under the regulations to keep out of the way. Article 25.

Difficulty has arisen in regard to the application of the crossing rule as between vessels proceeding along a narrow channel and those approaching the narrow channel with a view to proceeding along it. It would seem that, where in such circumstances both rules may be reasonably complied with, then obedience to both rules is incumbent upon the vessels. How to be applied.

Thus, where a ship, A., being in Cardiff drain, was required by the regulations to keep on the starboard side, and the other ship, B., was in the entrance channel to the Roath basin, it was held that they were crossing ships, and that A., having B. on her starboard hand, was required by Art. 16 to keep out of the way (*e*).

So also where two vessels were rounding the Clee Ness Buoy, the one bound from Grimsby to the sea and the other from the sea to Grimsby, the incoming vessel was held at fault both for being on her wrong side of the channel and also for not keeping her course and speed, and the outgoing vessel was held at fault for not keeping out of the way (*f*). In certain cases, where both the narrow channel and crossing rules were *primâ facie* applicable, compliance with one or both rules has been dispensed with. Thus the rules of seamanship alone were held to apply to vessels, one of which was proceeding up the eastern side of the entrance channel of Swansea harbour and the other entering the channel from a channel leading to a dock also on the eastern side of the channel. It was held to be reasonable, in the event of two vessels approaching the point of intersection of the two channels, for the vessel with the tide against her to wait until the other had passed (*g*). In the case of *The Kaiser Wilhelm der Grosse* (*h*), the circumstances were different from those dealt

(*e*) *The Leverington*, 11 P. D. 117; *The Cuba* v. *McMillan*, 26 Sup. Ct. (Canada) 651.

(*f*) *The Ashton*, (1905) P. 21.

(*g*) *The Prince Leopold de Belgique*, (1909) P. 103; see also *The Try Again*, Ship. Gaz. 2nd June, 1908.

(*h*) (1907) P. 259; see also *The Knaresboro*, (1907) P. 38, note, and p. 545, *infra*.

Article 25.

with above, inasmuch as in that case both vessels were approaching the narrow channel with a view to passing through it, the channel consisting of the strip of water, some half-a-mile wide, lying between the extremities of the two breakwaters protecting the entrance to Cherbourg harbour. The Court, having regard to evidence of custom and to the rules of seamanship, found that in this case the narrow channel rule alone applied, and that vessels leaving and entering the harbour and navigating in the waters adjoining the entrance should keep to their starboard side of the channel and should pass port side to port side.

If a ship's business takes her to the port side of a narrow channel, she is not required by Art. 25 to keep on the starboard side. *The Perim*, in a narrow channel (near Cronstadt), was held not to be in fault for breaking the starboard side rule when, at the time of the collision, she was making for a pilot station on the port side of the channel to discharge her pilot (*i*). So where a ship, whilst coming out of dock at Antwerp, got her stern to the east side of the river, it was held that she was not therefore to be held in fault. Art. 25, it was held, had no application in such a case (*k*).

Does Art. 25 apply where local rules are in force?

Questions may arise as to the application of the starboard side rule in waters where (as, for example, the river Thames) local rules of navigation are in force, but where there is no rule as to the side of the channel upon which ships are to navigate. It is submitted that in such cases Art. 25 has no application, and that absence in the local rules of a rule requiring vessels to navigate on one side of the channel or the other leads to the inference that vessels are free to navigate in any part of the channel. It was so held with reference to the navigation of the Thames at Millwall (*l*). The question, however, is not free from doubt; it may be contended that the local rules are supplementary to the general regulations (*m*). Even in foreign waters there is reason to think that the starboard side rule might be applied upon the

(*i*) *The Perim*, Ad. Div. 10th Nov. 1886.

(*k*) *The Whitlieburn*, 9 Asp. M. C. 154.

(*l*) *The Écossaise*, Ship. Gaz. 15th Dec. 1885. See, however, *The Gere*, (1909) P. 287. See also *The Carlotta*, (1899) P. 223, as to supplementing local rules by the sea rules.

(*m*) See *infra*, Art. 30.

principle enunciated in *The Fyenoord* (*n*). The general question as to what waters the regulations apply to is considered above, p. 516. Article 25.

The application of Art. 25 is illustrated by the cases relating to the analogous rule applicable to vehicles on a highway on land. In these cases it has been held that, whilst a driver on his wrong side is required to exercise more than ordinary care to avoid other vehicles (*o*), the rule of the road is not to be treated as the sole criterion of negligence (*p*). But the important distinction created by 56 & 57 Vict. c. 60, s. 419, in case of collision between ships, must not be overlooked in considering the application of the cases relating to collisions on land.

At the trial of a collision case before a jury the question has arisen whether it is for the judge or for the jury to decide what is a narrow channel. The point was not decided (*q*).

Rules in American rivers.

In America some of the States have passed laws as to the side on which vessels are to navigate; and in some rivers there is a customary track. Sometimes a ship bound up stream must keep on one side or the other of mid-channel, leaving the middle of the river to ships bound down. In the East River, at New York, it is the law that vessels going up or down shall keep in mid-channel. Where a ship is required by law or usage to keep on one side or the other, if she is on her wrong side she is held to be in fault for a collision with another ship that is on her right side and has done all that the law requires to keep clear (*r*).

Difficulty of applying the "crossing" and "meeting" rules in a winding river.

There is great difficulty in determining the application of some of the Articles of the general regulations to ships navigating a narrow and tortuous river. It appears to have been held by the Privy Council (*s*), in the case of two ships bound up and down a river, and first sighting each other on opposite sides of a point of land round which the river winds, that the ships are not "crossing" ships within the meaning of the

(*n*) Swab. 374.

(*o*) *Pluckwell* v. *Wilson*, 5 Car. & P. 375.

(*p*) *Wayde* v. *Lady Carr*, 2 Dow. & Ry. 255; *Wordsworth* v. *Willan*, 4 Esp. 273.

(*q*) *Australian Steam Nav. Co.* v. *Smith*, *The Victoria* and *The Keilawarra*, 14 App. Cas. 318.

(*r*) 1 Parsons on Shipping (ed. 1869), 582; *The Ivanhoe* and *The Martha M. Heath*, 7 Bened. 213; *The Vanderbilt*, 6 Wall. 225; *The Bay State*, 3 Blatchf. 18.

(*s*) See *The Velocity*, and cases cited below.

Article 25.

regulations; and that, if they are then on different sides of the river, the duty of each is to pursue her course as if the other were not in sight. If, when they first sight each other on opposite sides of a point of land, they are both in mid-channel, or equi-distant from the same shore, it is not clear how, and on which side, the law requires them to pass each other (*t*). It may happen, in such a case, that owing to the way of the ships through the water and the set of the tide it is possible for them to clear each other with certainty in one way, and in one way only.

Customary course in rivers.

In most tidal rivers there is a customary track for vessels going with the tide, and another for those going against it (*u*). Its course depends mainly on the practice for ships with a fair tide to keep in its strength, and for those with a foul tide to "cheat" it, or keep out of its strength. In a winding river, where there is an off-set of the tide from the points into the opposite bights, ships usually cross from one side of the river to the other at or about particular places in the different reaches. It has been held that such a practice, although not strictly a custom binding upon all ships, is one which a ship is justified in following and in assuming that other ships will follow (*x*). And it appears that this is so although her position with regard to another vessel is such that if she were in the open sea the regulations would apply and require her to act differently. In determining, therefore, what are the proper steps for a ship to take in order to avoid another approaching her in a winding river, the sinuosities of the river, and also the usual course of vessels in the river, must be taken into consideration. In cases where, if each ship continues her course in the usual track, they will pass clear, although if either deviates from it there would be risk of collision, it appears that the regulations do not apply, and that it is the duty of each vessel to continue her course in the usual track and as if the other were not in sight (*y*).

(*t*) As to the duty of two ships rounding a bend in a river in opposite directions, one outside the other, see *The Bywell Castle*, 4 P. D. 219, *per* Brett, L. J.

(*u*) In *The Cambria*, Ad. Div. May, 1887, Hannen, P., was advised by his assessors that there is no usage for ships bound down the river to keep either to the north or to the south side of the river from Millwall Pier round the Isle of Dogs.

(*x*) *The Esk* and *The Niord*, L. R. 3 P. C. 436, 442.

(*y*) *The Pekin*, (1897) App. Cas. 532; *The Velocity*, L. R. 5 P. C.

Article 25.

It has recently been held in the Admiralty Division that it is a prudent rule in a winding tidal river, in the absence of special regulations, for a steamship about to round a point against the tide to wait until a vessel coming in the opposite direction has passed clear, and a steamship was held in fault for disregarding this precaution in the Scheldt (*z*).

It appears, however, from a decision of the Court of Appeal, that the cases above cited as to the application of the general regulations in a winding river do not necessarily apply in a river where there are in force special rules made under a local Act for the express purpose of regulating its navigation. Although the Thames Rules (of 1872) were identical, as regards crossing ships, with the sea regulations, it seems to have been doubted whether the decision in *The Velocity*, and other cases following it, that two ships rounding a point are not within the "crossing" rule, would be followed in a similar case arising under the Thames Rules (*a*). The particular point decided in *The Velocity* does not arise upon the existing Thames Rules, which contain no rule corresponding to the "crossing" rule there discussed. But the principle involved in that and the other decisions above referred to is of wide application, and has an important bearing upon the existing Thames Rules, as well as other rules for the navigation of winding rivers. That principle is that the questions, Whether there is risk of collision? and, What rule is applicable where there is such risk? depend rather upon the relative positions of the two ships in the river as regards

44; *The Cologne* and *The Ranger*, L. R. 4 P. C. 519; *The Esk* and *The Niord*, L. R. 3 P. C. 436; *The Kjobenhavn*, 2 Asp. M. C. 213, 217; but see the observations of James, L. J., on some of these cases in *The Oceano*, 3 P. D. 60; see also *The Milwaukee*, Brown, Ad. 313. The principle adopted in the above cases by the Privy Council, that in determining the application of the regulations in a winding river the customary track of ships is to be considered, does not appear to have been followed by Dr. Lushington under former Acts and rules. In *The Friends*, 1 W. Rob. 478, and *The Gazelle*, *ibid.* 471, he expressed a strong opinion that where, except for the practice of the river as to keeping in or out of the strength of the tide, the Trinity Rule of 1840 would apply, the case was not taken out of the rule by the practice. And in *The Duke of Sussex*, 1 W. Rob. 274, it was held that the custom of the river as to vessels availing themselves of the strength of the tide was superseded by the Trinity Rule.

(*z*) *The Tilabot*, 6 Asp. M. C. 602. So in America: *The F. & P. M.* (No 2), 44 Fed. Rep. 698; *aliter*, where there is another channel free for the descending ship: *The City of Springfield*, 26 Fed. Rep. 158.

(*a*) *The Oceano*, 3 P. D. 60.

Article 25.

mid-channel, and upon the customary track of ships in the river, than upon the heading of the two ships at a particular moment.

American cases as to the application of the regulations in a winding river.

The following cases illustrate the view taken by the Supreme Court of the United States as to the application of the Regulations of 1863 in a winding river.

A sailing ship descending a river on a southerly course sighted a steamship ascending it. In accordance with the practice of the river, the sailing ship was on the west, and the steamship on the east, side of the channel. At a point between the two vessels the river took a bend in a south-easterly direction. On reaching this point the sailing ship's helm was put to starboard in order to round the bend. Instead of porting, so as to resume her course in the usual track along the west bank at a point where the channel turned again to the west and ran in its original southerly direction, the sailing ship continued the course she was on after her helm had been put to starboard. Crossing the channel to the east shore she ran into the steamship, which had continued her original course along that shore. It was held that the sailing ship was in fault for deviating from the customary track along the west shore; that her duty under the rule (identical with Art. 18 of the Regulations of 1863) requiring her to keep her course was to keep her course along the west shore, deviating from a straight course only so far as the winding of the river required (*b*). The judgment of the Supreme Court in this case is to the effect that when a point of land or other obstruction in the navigation interferes with the literal application of the regulations, they are, nevertheless, to be complied with so far as possible; that a vessel required by the law to keep her course, if she is compelled by an obstruction or bend in the river to deviate from it, must resume her original course as soon as possible. And the Court expressly held, that where two vessels will pass clear if each adheres to the customary track, the regulations have no application; and that a vessel deviating from the customary track in supposed obedience to the regulations is in fault.

(*b*) *The John L. Hasbrouck*, 3 Otto, 405; cf. *The New York*, 82 Fed. Rep. 819.

Article 25.

In *The Free State* (*c*), a sailing ship was crossing a river diagonally, for a temporary purpose, when she sighted a steamship approaching with risk of collision; the Supreme Court held that the duty of the sailing ship was to keep on her course across the river. The sailing ship ascending a river on a northerly course and being overtaken by a steamship, starboarded until her head was N.W. by N., in order to give the steamship more room to pass on her starboard hand. While crossing the river on the N.W. by N. course she sighted another steamship descending the river and preparing to pass the ascending steamship port side to port side. After being passed by the ascending steamship the sailing vessel ported and attempted to follow in her wake, so as to pass the descending steamship port side to port side. In doing so she came into collision with the latter, and it was held by the Supreme Court that she was in fault for not keeping her N.W. by N. course.

When two steamships proceeding in the same direction were rounding a point or bend in a river nearly abreast, it was held that it was the duty of each to keep in her own water, and not attempt to cross the course of the other. The outside boat was held in fault for a collision that occurred while attempting to get in to the shore across the bows of the other (*d*).

In *The Milwaukee* (*e*), it was held that the question whether, in a winding river, two ships were meeting "end on" is to be determined by their general course in the river, and not by their compass course at a particular moment while they are pursuing the windings of the channel.

System of buoyage and narrow channel.

Where conical buoys were placed down the centre of a navigable channel, a vessel was held free from blame for having treated them as starboard hand buoys, even though by so treating them she brought herself on to the wrong side of the navigable channel (*f*).

(*c*) 1 Otto, 200.
(*d*) *The Oceanus*, 12 Blatchf. 430.
(*e*) Brown, Adm. 313.
(*f*) *The Gustafsberg*, (1905) P. 10. For uniform system of buoyage, see Channel Pilot, 9th ed. Pt. I. p. 29.

Article 26.

Article 26. Sailing ships to keep out of the way of fishing craft.

Sailing vessels under way shall keep out of the way of sailing vessels or boats fishing with nets, or lines, or trawls. This rule shall not give to any vessel or boat engaged in fishing the right of obstructing a fairway used by vessels other than fishing vessels or boats.

This Article first appeared in the present Regulations. Although limited to sailing vessels, steam vessels are bound to keep out of the way of sailing fishing craft, by virtue of Art. 20. What effect the Article has as regards sailing trawlers at work is not clear. Hitherto it seems to have been assumed that a trawler at work is "under way" (*g*). Under Art. 26 it would seem that a sailing trawler at work is not a "sailing vessel" under way within the meaning of some of the regulations. Steam trawlers are not touched by Art. 26, and, so far as they can, must comply with the regulations for "steam vessels" (see Art. 20).

Article 27.

Article 27. Proviso as to special circumstances.

In obeying and construing these rules, due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

This Article is identical with Art. 23 of the Regulations of 1884, except for the insertion of the words "and collision."

The concluding words of Art. 27, while bearing a strong resemblance to those of 57 & 58 Vict. c. 60, s. 419 (4), are not identical with them. The statute, inasmuch as it does not refer to "immediate danger," would seem to confer a wider exemption than does the Article. It may further be observed that while the Article refers to a departure from

(*g*) See *The Chusan*, 5 Asp. M. C. 476 (sailing trawler); *The Tweedsdale*, 14 P. D. 164; *The Dunelm*, 9 P. D. 164 (steam trawlers).

Article 27.

"the above rules," the statute refers to "a departure from the regulations." The exact meaning to be attached to the phrase "the above rules" found in the Article has not been determined, although an opinion was expressed in a dissenting judgment in the Court of Appeal (*h*), that "above rules" means that group of "Steering and Sailing Rules" of which Art. 27 forms the last. If this view be correct, then the statute not only confers a wider exemption than Art. 27 in respect of rules to which the Article is applicable, but also confers an exemption in respect of rules to which the Article is not applicable at all. It may be suggested in support of this proposition that a justifiable breach of rules, other than the "Steering and Sailing Rules" (*i*), in circumstances in which there is no "immediate danger," is more readily conceivable than is such a breach of the "Steering and Sailing Rules."

A case in which the statute was applied, and in which, it is submitted, the Article would not have been applicable, was that of *The Chilian*. In this case a vessel in fog employed a mouth-horn in place of the mechanical fog-horn, which she was required to carry. Her departure from the rules was held to be "necessary" within the statute (*k*).

Art. 27 appears to justify a departure from any of the regulations, including those as to lights and fog signals, in order to avoid immediate danger. The question has been raised whether a steamship at anchor in a fog is justified by Art. 27 in sounding her steam whistle for the purpose of attracting the attention of another vessel heading straight for her and apparently not hearing her bell. It would seem that such a use of the whistle might, under exceptional circumstances, be justified (*l*). But the circumstances must be very exceptional to justify the use of any light or fog signal other than those prescribed by the regulations; and the stringent provisions of 57 & 58 Vict. c. 60, s. 419, must not

(*h*) *Per* Fletcher Moulton, L. J., in *The Bellanoch*, (1907) P. 170 at p. 189.

(*i*) With the possible exception of Art. 28, as to which see *infra*, p. 466.

(*k*) 4 Asp. M. C. 473; *The Calypso* and *The Mississipi*, Ad. Ct. 7th, 8th and 9th March, 1878 (for facts, see *supra*, p. 44); see also *The Cooper*, Viet. L. R. xxix. p. 874; *The Gladys*, (1910) P. 13; *The Trave*, 68 Fed. Rep. 390.

(*l*) Cf. *The Merchant Prince*, 10 P. D. 139.

Article 27.

be overlooked. Nor would a seaman be held in fault for not instantly arriving at the conclusion that a departure from the regulations was necessary (*m*).

In *The Benares* (*n*) (1883), it was held by the Court of Appeal, that where there is one and only one "chance of escape" from collision, a seaman is justified in taking the benefit of that chance, although it necessitates a departure from the regulations. Under former regulations there was difficulty in reconciling this decision with dicta in *The Khedive* (*o*) to the effect that danger from collision was not a circumstance justifying departure from the regulations. It was probably to remove this difficulty that the words "and collision" were inserted in Art. 27.

The important distinction between *The Khedive* and *The Benares* must, however, not be lost sight of. In the former case, the ship which was held in fault, under the statute, for having infringed the regulations, did what was, though not a negligent act, in fact the wrong thing in point of seamanship, and thereby, probably, caused the collision. In *The Benares* the ship did what from a seaman's point of view, and apart from the regulations, was the right thing; and though in the result it failed to avert a collision, it did not cause the collision, which was, from the first, inevitable. The difference between the two cases is that, although in neither of them was there negligence on the part of those on board, in the one case the House of Lords held that the regulations had been infringed, in the other the Court of Appeal held that they had not been infringed.

Regulations never to be departed from except for necessity.

It is sometimes attempted to urge this Article as an excuse for a departure from the regulations where an adherence to them would have prevented a collision. In such a case Art. 27 has no application; nor does it in any way affect the universal application of the regulations where it is possible to apply them so as to avert collision. This is well illustrated

(*m*) See *The Oregon*, 51 Davis, 186, as to a ship at anchor exhibiting a flare.

(*n*) 9 P. D. 16.

(*o*) 5 App. Cas. 876. See the observations of Lords Watson and Blackburn, pp. 895, 902; and of Field, J., in the American case, *The Maggie J. Smith*, 16 Dav. 349, 354. In *The S. Anderson*, 26 Fed. Rep. 392, it was held that the closeness of the ships, when first seen by each other, was a circumstance justifying departure from the regulations.

Article 27.

by the case of *The Khedive* (*p*). There a steamship was suddenly put into a difficulty, and risk of collision was caused, by the wrong manœuvre of another steamship approaching her. The former stopped her engines, but did not immediately reverse, though she did reverse before the collision. By not reversing immediately the officer in charge did not show himself wanting in ordinary care, skill, or nerve, though he committed an error of judgment. It was held that he had departed from the regulations.

Safety attained by their uniform and exact observance.

A vessel is not justified in departing from the regulations because she fears that the other ship will not comply with them. In a case decided under the Trinity Rules of 1840, Dr. Lushington thus laid down the general principle: "I cannot conceive that anything would be more likely to lead to mischievous consequences than to suppose that a vessel whose duty it is to keep her course should anticipate that another vessel will not give way, and so give way herself. The consequence would be that there would be no certainty; whereas the doctrine I have upheld, supported by your (*i.e.*, the nautical assessors') authority, is that in cases of this description you ought always to follow the general rule. The certainty which results from adherence to general rules is, in my opinion, absolutely essential to the safety of navigation" (*q*). Again: "All rules are framed for the benefit of ships navigating the seas, and no doubt circumstances will arise in which it would be perfect folly to attempt to carry into execution every rule, however wisely framed. It is, at the same time, of the greatest possible importance to adhere as closely as possible to established rules, and never to allow a deviation from them unless the circumstances which are alleged to have rendered such a deviation necessary are most distinctly proved and established; otherwise vessels would always be in doubt and doing wrong" (*r*).

The Superior.

The case of *The Superior* (*s*), decided under the Trinity House Rule of 1840, is a strong one, as showing that the

(*p*) 5 App. Cas. 876.

(*q*) *The Test*, 5 Not. of Cas. 276. See also *The Superior*, 6 Not. of Cas. 607.

(*r*) *The John Buddle*, 5 Not. of Cas. 387; cf. *The Great Eastern*, 3 Moo. P. C. N. S. 31; *The Highgate*, *supra*, p. 408.

(*s*) 6 Not. of Cas. 607.

Article 27.

necessity of observing rules of navigation, wherever it is possible to do so, has been insisted upon from the first. A. was a brig bound down the Thames against the flood-tide, with the wind free. B., a brig bound up the river, was required by the rule (*t*) to pass to the northward of A. Close ahead of A. was a schooner, which, in violation of the Trinity Rule, passed to the northward, or inside B. Expecting that A. would follow in the wake of the schooner and pass inside, B. starboarded, and in attempting to pass outside or to the southward of A. came into collision with her. B. alleged that there was no room for her to pass between the schooner and A. It was held that the fact of the schooner having safely passed B. on the wrong side—of her having violated the rule with impunity—was no justification to B. for herself violating the rule, in the expectation that A. would not obey the rule, but would follow the schooner, and pass inside.

In *The Khedive* (*u*), the safety which arises from universal obedience to the regulations, where it is possible to obey them without causing a collision, was strongly insisted upon by the House of Lords. They must, it was said, be complied with, although in the particular case it may seem to be better seamanship not to do so. "These rules . . . are general rules," said Lord Hatherley, "to be adopted by all persons having charge of the navigation of vessels, with the exceptions which have been pointed out (as to immediate danger). This rule (as to stopping and reversing) is not laid down merely for the sake of the vessel commanded by the man who breaks it, but for the sake of the vessel commanded by the man approaching at a distance, and who has no right or reason to suppose that he will break it. If the rule is observed, every person will know precisely what he is to do, and will say, 'I will carry out my directions entirely with that knowledge.' On the other hand, if the Court allows these rules to be lightly departed from, the result will be the very evil which the Act was intended to prevent." And in the same case, Lord

(*t*) It does not clearly appear whether she had the wind free or was close-hauled. In either case her duty as to passing to the northward of the other ship was the same.

(*u*) *Stoomvaart Maatschappy Nederland* v. *Peninsular and Oriental Steam Navigation Co.*, *The Khedive*, 5 App. Cas. 876, 895, 904, 909.

Watson (*x*) said :—" It was the deliberate policy of the legislature to compel sea captains, where their vessels are in danger of collision, to obey the rule (Art. 16 of 1863), and not to trust to their own nerve and skill." Article 27.

At the date of the observations of Dr. Lushington in the case cited above (*y*) there was in force no enactment or rule corresponding to Art. 27. A saving clause restraining the indiscriminate application of the statutory rules of navigation first appears in 17 & 18 Vict. c. 104, s. 296. An Article to the same effect (Art. 19) is included in the Regulations of 1863. The purpose of such an enactment clearly is to provide for cases where a literal compliance with the regulations would cause a collision or bring the ships into certain peril. The stringency of the existing regulations would seem to be greater than that of the (1840) Trinity House rule of port helm. In *The Friends* (*z*), Lord Campbell said that that rule applied only where, by its application, a collision " may probably be avoided."

Art. 27 prevents the regulations being applied so as to cause collision.

Of the corresponding Article of the former law Dr. Lushington said that it was not a directory enactment, telling persons to do this or that, but that it released them from the severe obligation of complying with the regulation under circumstances which would render obedience to them dangerous, when, by deviation, they might escape danger (*a*). But Art. 27 applies only to cases where " there is immediate danger, perfectly clear " (*b*) ; and the departure from the rules must be no more than is necessary (*c*). It " does not prescribe any particular measures that should be adopted in departing from the strict terms of any of the previous regulations that it governs, but it merely states that in construing and obeying these regulations as far as possible you may take into consideration urgent attendant circumstances. . . . It is common sense ; for if any rule were laid down by Act of Parliament, or any other authority, that could never be departed from in certain states of circumstances, such a rule

(*x*) 5 App. Cas. 904.
(*y*) *Supra*, p. 453.
(*z*) 4 Moo. P. C. 314, 320.
(*a*) *The Eliza* and *The Orinoco*, Holt, 98. See *The Concordia*, L. R. 1 A. & E. 93, 97.
(*b*) *The Allan* and *The Flora*, 14 L. T. 860 ; *The Moderation*, 1 Moo. P. C. 528.
(*c*) *The Saragossa*, 7 Asp. M. C. 289.

Article 27.

would necessarily involve, on many occasions, the destruction of ships which it was intended to preserve" (*d*). "The duty is to avoid collision by observing the rules, primarily; by departing from them, if necessary, to avoid danger" (*e*).

Duty to avoid collision, and for that purpose to depart from the regulations if necessary.

Not only is departure from the rule of the road excused by Art. 27, where the rule cannot be obeyed without collision, but a literal observance of the regulations cannot be set up as a defence where the collision might have been avoided by ordinary care (*f*). "When one person neglects his duty, and so puts another into danger, the second is not justified in doing nothing to avert that danger, though it is caused entirely by the fault of the first" (*g*). "You may depart, and you must depart, from a rule if you see with perfect clearness, almost amounting to certainty, that adhering to the rule will bring about a collision, and violating a rule will avoid it; and, indeed, this is provided for by the 19th Article" (of the Regulations of 1863) (*h*). And, again, "you have no right to stand in a difficulty upon a right, though it may be a perfectly good right, obstinately, recklessly, and regardless of the safety of others" (*i*). Art. 27, in fact, merely states the general principle, which, it is submitted, would prevail in the absence of such an enactment. The principle was thus stated by Best, C. J.:—"Although there may be a rule of the sea, yet a man who has the management of one ship is not to be allowed to follow that rule to the injury of a vessel of another, where he could avoid the injury by pursuing a different course" (*k*).

A barque close-hauled on the starboard tack was held to be solely in fault for a collision with a barque that had just been in stays, and had not gathered way on the port tack.

(*d*) *Per* Dr. Lushington in *The Allan* and *The Flora*, *ubi supra*; and see *The Superior*, *ubi supra*. The Supreme Court of the United States used similar language with regard to the operation of Art. 19 of the Regulations of 1863 in *The Cayuga*, 14 Wall. 270; *The Sunnyside*, 1 Otto, 208.

(*e*) *The Hercules*, 51 Fed. Rep. 452; *The Spiegel*, 84 Fed. Rep. 1002.

(*f*) See further on this, *supra*, p. 20.

(*g*) *Per* Brett, L. J., *The Jane Bacon*, 27 W. R. 35.

(*h*) *Per* Dr. Lushington, in *The Boanerges* and *The Anglo-Indian*, 2 Mar. Law Cas. O. S. 239. See also *The Ida* and *The Wasa*, *infra*; *Handaysyde* v. *Wilson*, 3 Car. & P. 528; *The Lady Anne*, 15 Jur. 18.

(*i*) *The Legatus* and *The Emily*, Holt, 217.

(*k*) *Handaysyde* v. *Wilson*, 3 Car. & P. 528; see also *Mayhew* v. *Boyce*, 1 Stark. 423; cf. *The C. R. Stone*, 49 Fed. Rep. 475; *The Hercules*, 51 Fed. Rep. 452, 475.

Article 27.

The Court (in Ireland) said that if a ship insists on her right, under a rule of navigation, of not giving way, and makes no effort to prevent the collision when it is in her power to do so, she will be held not to have performed her duty, and to be in fault for the collision (*l*). So a ship on the port tack was (in 1850) held in fault for a collision with another having the wind free, which she had seen a mile and a-half off and did not attempt to avoid (*m*); and more recently a schooner on the starboard tack was held in fault for doing nothing before she came into collision with a smack hove-to on the port tack (*n*).

The Lady Anne, close-hauled on the starboard tack, was meeting another ship, close-hauled on the port tack. It was held that *The Lady Anne* might have avoided the collision by putting her helm down at the last moment and easing off her head sheets, and that she was in fault for not doing so (*o*).

So a sailing ship will be held in fault for a collision with a steamship if she makes no attempt to avoid a collision, where it is clearly in her power to do so. In such a case a mere adherence to the letter of the regulations is no justification. In *The Sunnyside*, a sailing ship, with the wind free, saw the mast-head and green lights of a steamship half a point on her port bow, a considerable distance off. The lights were those of a tug, drifting before the wind, at about a mile and a-half an hour, and waiting for employment. The sailing ship kept her course, and did not alter her helm until it was too late to avoid the tug. It was held in America by the Supreme Court that the sailing ship was in fault, as well as the tug (*p*). In *The Zadok* (*q*), a sailing ship was held in fault for a collision in a fog with a steamship, because, amongst other acts of negligence, after she heard the whistle of the steamship approaching, she had no hands stationed at the

(*l*) *The Ida* and *The Wasa*, 15 L. T. 103.

(*m*) *The Commerce*, 3 W. Rob. 287; but see the observations of Sir J. Colville on this case, 4 App. Cas. 672.

(*n*) *The Rosalie*, 5 P. D. 245.

(*o*) *The Lady Anne*, 15 Jur. 18.

(*p*) *The Sunnyside*, 1 Otto, 208; *The General Lee*, 82 Fed. Rep. 830, is a similar case. In *The Patria*, 92 Fed. Rep. 411, an overtaken sailing ship was held in fault for not luffing; but see *The Bougainville* v. *The James C. Stevenson*, L. R. 5 P. C. 316, for a case of premature alteration of her course by the sailing ship.

(*q*) 9 P. D. 114.

Article 27.

braces ready to let them go so as to assist the helm when the steamship came into sight at close quarters.

The Tasmania (*r*), a steamship going three and a-half knots, saw the red light of another steamship one mile or more distant, and two points upon her port bow. When the latter was about four ship's lengths off, the green came into view. No alteration in speed or helm was made until the hull of the other ship was seen. The question was whether *The Tasmania* was in fault, under Art. 23, for not having altered her course before the collision. After different decisions in the Courts below, the House of Lords held that she was not in fault. And in *The Highgate* (*s*), Sir James Hannen distinguished the then subsisting decision of the Court of Appeal in *The Tasmania*, and refused to hold a sailing ship in fault for not taking any step to avoid an approaching steamer until collision was imminent, saying that, "It is only where a clear case of necessity is made out that a captain can excuse himself for not following the rule."

Duty to keep out of the way of warships.

Under this Article must be considered cases in which one of a fleet of warships has come into collision with a merchantman; the question in such cases usually having been whether the approach of such a fleet on a crossing course upon the port bow, in the case of a steamship, or from any direction, in the case of a sailing ship, constitutes such "special circumstances" under the Article or otherwise brings about such a state of affairs, that it becomes the merchantman's duty to keep out of the way.

The issue between the vessels in such a case is purely one of negligence, the statutory penalty imposed by the Merchant Shipping Act of 1894, s. 419 (4), not being applicable (*t*), although the rules and regulations to which each vessel is subject are relevant as establishing an approved course of conduct. The merchantman must still regard the regulations as binding upon her, although not liable to the statutory penalty for a breach of them. She must also, it seems, pay

(*r*) 15 App. Cas. 223, reversing 14 P. D. 53.

(*s*) 6 Asp. M. C. 512.

(*t*) As to the warship, see *ante*, p. 366. As to the merchantman, breaches of Arts. 21, 27, and 29 do not, where the other vessel is not bound by the section, involve the statutory penalty, and may never do so; *The Etna*, (1908) P. 269; *The Sans Pareil*, (1900) P. 267, and *ante*, p. 54.

attention to any notice (*u*) which the Board of Trade may issue with reference to the meeting of merchantmen with fleets of warships. The warship must conform to the collision regulations imposed upon His Majesty's ships by Order in Council (June, 1899), which are identical in terms (*x*) with those promulgated under the Merchant Shipping Act, although made independently of that Act (*y*). The navigating officer must also conform with the directions contained in the King's Regulations and Admiralty Instructions. Article 27.

In the light of these regulations it appears that in these cases two questions have to be determined by the Court. Firstly, was there a duty upon the merchantman, having regard to the size and formation of the fleet, and to any notice (if known (*z*)) of the Board of Trade, to keep out of the way? Secondly, was the conduct of the warship, having regard to the duties (sometimes apparently inconsistent), imposed upon her by the two sets of regulations, in the circumstances correct?

In *The Sans Pareil* (*a*) it was unanimously held by the learned Lords Justices that the tug with a vessel in tow, which was approaching a fleet of thirty warships in four columns, having them on her port bow on a crossing course, was guilty of negligence in keeping her course and speed. In this case, however, such negligence was not held to have contributed to the collision.

In *The Melampus* (*b*) a steamship kept her course and speed on meeting a fleet of warships, approaching her on the port bow, the steamship being about to cross ahead of *The Melampus*, which was following the starboard hand vessel of two other warships sailing abreast. The steamship was found to have acted properly, and the warship was found at fault for not taking proper steps to keep out of her way.

In *The Sutlej* (*c*), a sailing ship was approaching a fleet of eight warships, formed into two columns of four, and was shaping to pass between the third and the last vessels of the

(*u*) *The Etna*, *supra*.

(*x*) The order contains some provisions as to lights and signals in addition to those contained in the ordinary collision regulations.

(*y*) See *ante*, p. 366.

(*z*) *The Etna*, (1908) P. 269, at p. 279.

(*a*) *The Sans Pareil*, (1900) P. 267.

(*b*) *The Melampus*, Ship. Gaz. Dec. 22nd, 1903.

(*c*) *The Sutlej* (1905), T. L. R. 325.

Article 27.

port column from their port side. It was held that the duty of the sailing ship was to keep her course and speed, and that she was in fault for not doing so. The navigating officer of *The Sutlej* in this case found himself compelled by the Collision Regulations, as applied to His Majesty's ships, to keep out of the way of the sailing ship; and at the same time by Art. 597 (sub-rule 12) of the King's Regulations, "never to change the course without directions from the captain, unless to avoid immediate danger." Under the circumstances he was held to have starboarded in time.

In *The Etna* (*d*), a merchantman, which had, by reason of faulty look-out, brought herself within the port and the starboard columns of a flotilla of torpedo boats, which was approaching her on her port bow upon a crossing course, was held at fault for a breach of Art. 27 in not keeping out of the way. *The Wear*, with which she collided, which was the second ship in the port column, was held in fault for not taking steps to keep out of the way in proper time, regard being paid to her conflicting duties under the regulations.

In *The Colstrop* (*e*), the point was taken that it was the duty of a merchantman approaching a flotilla of twenty destroyers in three columns on a course, which would take her between the port and middle columns, to keep out of the way. It became unnecessary to decide this point, the merchantman being found to blame on other grounds.

Danger of departing from the regulations.

Great caution must be used in applying the principle recognized in some of the above cases, that under some circumstances it is the duty of a ship to disobey the regulations. It may be applied only where the circumstances are very exceptional. "The principle of law that you are not to adhere to strict rules of navigation but avoid an accident if possible is a doctrine to be very carefully watched" (*f*). The Court will not hold a ship in fault for not departing from the regulations in a case where they were *primâ facie* applicable, and the other ship failed to comply with them, unless it is clearly proved that those on board the first ship might with reasonable care have seen that the other ship was

(*d*) *The Etna, supra.*

(*e*) *The Colstrop*, Ship. Gaz., Oct. 24th, 1908.

(*f*) *Per* Dr. Lushington, *The Test*, 5 Not. of Cas. 276.

Article 27.

not going to comply with the regulations; and further, that they should have seen this at a time when it was in their power to avoid the collision.

A ship, A., close-hauled on the port tack, and another, B., on the starboard tack with the wind free, were on crossing courses. A. stood on until immediately before the collision, when she luffed. B. neglected to keep out of the way, as required by the regulations. It was held that A. was in fault as well as B., because she pertinaciously kept her course, when she ought to have seen that B. was not going to keep out of the way in compliance with the law; and in so deciding, the Court relied on *The Commerce* (*g*). The Privy Council reversed the decision of the Court below, and held that A. was not in fault. Sir J. W. Colville, in delivering the judgment of the Privy Council, said: "Their lordships remark that, though the principle involved in that case (*The Commerce*) may be in itself a sound one, it is one which should be applied very cautiously, and only when the circumstances are clearly exceptional. They conceive that to leave to masters of vessels a discretion as to obeying or departing from the sailing rules is dangerous to the public; and that, to require them to exercise such discretion, except in a very clear case of necessity, is hard upon the masters themselves, inasmuch as the slightest departure from these rules is almost invariably relied on as contributory negligence" (*h*).

If the regulations cannot be complied with, or cannot, if complied with, prevent the collision, Art. 27 does not apply.

Art. 27 is not intended to apply to a case where the regulations cannot be complied with, nor to a case where non-compliance could not by possibility have caused the collision. In such a case non-compliance with the regulations is immaterial upon the question which ship is in fault, but that is so by virtue of the general law, and not under Art. 27 (*i*). But it appears that where the collision, though in fact inevitable, may, in the opinion of a seaman of

(*g*) 3 W. Rob. 287.

(*h*) *The William Frederick* and *The Byfoged Christensen*, 4 App. Cas. 669; and see *The Legatus* and *The Emily*, Holt, 217.

(*i*) See *The City of Antwerp* and *The Friedrich*, L. R. 2 P. C. 25, 34. Cf. *per* Smith, L. J., in *The Sans Pareil*, (1900) P. 267, 282: "Where a man is called upon to do his best because the collision regulations cannot be carried out, there cannot be a breach of the regulations within sect. 419 of the Merchant Shipping Act, 1894."

Article 27.

ordinary skill, be avoided by departing from the regulation (*k*) which is *primâ facie* applicable, the ship will not be held in fault for a departure from the regulations merely because the collision has occurred (*l*).

A ship is not bound to take a step dangerous to herself.

Nothing in the regulations requires a ship to take a measure which puts her into imminent peril (*m*). A vessel is not bound to obey the rule requiring her to port, if, by porting, she will incur serious danger by going ashore (*n*), or striking another ship (*o*). In such a case Art. 27 may apply to both vessels, or to one of them. It excuses non-compliance with the Article requiring her to port on the part of the one vessel, because of the rock or shoal; and if, in order to avoid a collision, it is necessary for the other vessel to depart from the regulations, it is her duty to do so, and Art. 27 excuses her departure.

"Special circumstances."

So, where a ship required by the regulations to keep out of the way is unable to do so, it is the duty of the other not to keep her course, but herself to keep out of the way. Two vessels, close-hauled on opposite tacks, were crossing, and the ship on the port tack could not bear up for fear of collision, and could not go about because of a shoal. It was held (in America) that the ship on the starboard tack was in fault for not keeping out of the way (*p*).

Two ships were beating to windward in company on the same tack. The leeward ship had to go about for a third ship. The windward ship did not observe her go about and fouled her. It was held that there were "special circumstances" which made it the duty of the windward ship to go about when the other did (*q*).

A tug, whilst being overtaken by another vessel, was compelled to alter her course to clear a third ship. The overtaking vessel, in consequence of the tug's alteration of course, fouled the tow. She was held alone in fault (*r*).

(*k*) *The Benares*, 9 P. D. 16.

(*l*) See *The Khedive*, 5 App. Cas. 876, 902.

(*m*) *The St. Cyran* v. *The Henry*, 12 W. R. 1014. In *The Sons Pareil*, *supra*, *The East Lothian* would, it is submitted, have been justified under the principle stated in the text, in departing from Art. 21.

(*n*) *The Lucia Jantina* v. *The Mexican*, Holt, 130.

(*o*) *The Concordia*, L. R. 1 A. & E. 93.

(*p*) *The Ann Caroline*, 2 Wall. 538.

(*q*) *The Commodore Jones*, 25 Fed. Rep. 506.

(*r*) *Whiteash* v. *The Winnie*, 64 Fed. Rep. 893.

A steam trawler, encumbered with trawl, may be held justified, under Art. 27, in not taking such steps as would naturally be incumbent on a steamship to keep out of the way of a sailing ship (*s*). Article 27.

On the other hand, where two steamships were approaching a pilot station, and the vessel which had the other on her starboard hand had brought herself to a standstill, it was held that there were no "special circumstances" within Art. 27 to justify a breach of the crossing rule (*t*).

If a vessel is partially disabled, or in a condition which prevents her answering her helm readily, she must take precautions in time, and do all she can to comply with the regulations effectually (*u*). A brig hove-to, reefing topsails, was held in fault for not porting (*x*). Where a ship had no head sail on her, and the regulations required her to bear up, it was held that it was the duty of those on board to take the after sail off her, so that she might be better able to bear up (*y*). Disabled ship.

If it appears that a vessel is unable to comply with the regulations owing to her being disabled, or in stays, or for other reasons, it is the duty of those on board the other to watch her closely. They have no right to speculate on the disabled ship being able to keep out of the way, but they should themselves at once take steps to make the collision impossible (*z*).

It was held in America that the fact of a schooner's flying-jib being carried away was no excuse for her not bearing up; and that the other ship was not in fault because she failed in the daytime to see that the schooner was partially disabled (*a*).

To justify a departure from the regulations which is alleged to have been necessary to avoid immediate danger, there must be clear proof that an adherence to them would have caused such danger, and also that the step taken was Necessity of departure from the regulations must be proved.

(*s*) *The Tweedsdale*, 14 P. D. 164 at p. 169. But see cases under Art. 20, p. 407.
(*t*) *The Albano*, (1907) A. C. 193.
(*u*) *The Test*, 5 Not. of Cas. 276.
(*x*) *The Blenheim*, 1 Sp. 285.
(*y*) *The Calcutta*, 21 L. T. 768.
(*z*) *The Priscilla*, L. R. 3 A. & E. 125. See also *The Ch. Raab*, Brown, Adm. 453.
(*a*) *The H. P. Baldwin*, Brown, Ad. 300.

Article 27.

the right step (*b*). It is not enough to show that, if the approaching ship had taken one manœuvre when others were open to her, obedience to the regulations would have increased, instead of diminishing, the risk of collision. Therefore, where the steamship *San Salvador* was approaching the steamship *Memnon* on a crossing course, having her on her own starboard bow, and taking no step to keep out of the way, and the speed of the latter was such that in the existing circumstances she would probably have passed safely across the former's bows, *The Memnon* was held in fault for not stopping her engines, although, had the *San Salvador* kept her course, the risk of collision would have been increased and not diminished by *The Memnon* slackening her speed (*c*). Where it is possible to comply with the regulations, Art. 27 would be no excuse for departing from them. In a case under the Trinity Rules of 1840, it was held that it was no excuse for not observing the rules that the night was very dark, and that the other ship was not seen until she was very close (*d*).

Where two steamships were meeting in the Thames end on, and one starboarded in order, as was alleged, to clear a barge, in the absence of proof that the starboarding was necessary, she was held in fault for a collision with the other steamship (*e*). The obligation on a ship which seeks to justify a departure from the regulations is heavy. She takes upon herself the obligation of showing both that the departure was necessary in order to avoid immediate danger, and also that the course adopted by her was reasonably calculated to avoid that danger (*f*).

Cases where departure from the regulations held not justifiable.

The fact that a steam tug had a heavy ship in tow, and a strong wind and tide against her, was held not to justify her departing from the rule requiring her to keep out of the way of an approaching sailing ship (*g*). And where a large steamship of 1,356 tons had a disabled steamship of 1,495

(*b*) *The Concordia* v. *The Esther*, L. R. 1 A. & E. 93. And see *The Corsica*, 9 Wall. 630.
(*c*) *The Memnon*, 6 Asp. M. C. 488.
(*d*) *The Flint*, 6 Not. of Cas. 271.
(*e*) *The Concordia* and *The Esther*, L. R. 1 A. & E. 93.
(*f*) *The Agra* and *The Elizabeth Jenkins*, L. R. 1 P. C. 501.
(*g*) *The Warrior*, L. R. 3 A. & E. 553.

tons in tow, and was fast to the latter by a tow rope and chain cables of such length that from the bow of the towing vessel to the stern of the other was nearly a quarter of a mile, it was held by the Privy Council that those circumstances did not justify a departure from the rule requiring steamships to keep out of the way of a sailing ship (*h*).

Two steamships on crossing courses, both making for a pilot cutter, must keep clear of each other by observing the regulations. The fact that they are both making for the cutter does not justify the steamship with the other on her starboard hand in neglecting to keep out of the way (*i*). In such circumstances, however, the other vessel, if it is apparent that she is approaching the cutter to pick up a pilot, may be excused under Art. 27 from the duty to keep her course and speed, providing any alteration in her course and speed was made in the ordinary course of navigation for the purpose of picking up the pilot (*k*).

A sailing ship beating to windward ahead of a steamship is justified by Art. 27 in going about when she has stood in towards a sand ahead of her as near as is prudent, although, except for the danger of going ashore, it would be her duty to keep her course (*l*).

It seems that Art. 27 does not justify a departure from the regulations on the ground that it was reasonable to expect that the force of the blow would thereby be diminished (*m*).

Convenience no excuse for departing from the regulations.

Where a collision may be avoided by obeying the regulations, it is not a sufficient excuse for departing from them that the collision might, with equal safety and more conveniently, have been avoided by one or both ships departing from the regulations. Thus, where a steamship sighted another at a considerable distance, approaching her nearly end on and a little on her starboard bow, it was held that the

(*h*) *The American* and *The Syria*, L. R. 4 A. & E. 226; on appeal, L. R. 6 P. C. 127.

(*i*) *The Ada* v. *The Sappho*, 1 Asp. M. C. 475; affirmed in the Privy Council by Gorell Barnes, P., in *The Albano* and *The Parisian*, (1907) P. 193.

(*k*) *The Roanoke*, (1908) P. 231. Though this case related to speed alone, it is submitted, in view of the observations of the learned judges in the Court of Appeal, that a like principle would apply to a change of course.

(*l*) *The Orwell*, *supra*, p. 415.

(*m*) *The Khedive*, 5 App. Cas. 876.

Article 27.

law required her to port, and that she was in fault for starboarding, although by porting she would have had to cross the bows of the other ship (*n*).

A ship close-hauled should luff, if possible, rather than bear up.

If a ship that is close-hauled must, in order to avoid a collision, either luff or bear up, it has been said that the more prudent course for her is to luff, if possible, "so as thereby to stop her way, and mitigate as far as possible the effects of a collision, if a collision should take place" (*o*).

Neither ship may depart from the regulations on the chance of the other obeying them.

Although the steps which the regulations require two vessels approaching with risk of collision to take are not necessary, in the sense that a collision would certainly be avoided by only one of the vessels obeying the regulations, the law must be obeyed by both. A vessel departing from the regulations will not be excused on the ground that the collision would have been avoided if the other vessel had not disobeyed the law. In such a case Art. 23 is no justification for either ship in departing from the regulations. Thus, where two steamships were meeting end on, and a collision would not have occurred if either had put her helm to port, both were held in fault by the Supreme Court of the United States (*p*).

Combined operation of Art. 27 and Art. 28.

It still remains to be decided what effect Art. 27 has upon the application of Art. 28. The point has recently been discussed in the important case of *The Bellanoch* (*q*), but no decision thereon was ultimately found necessary. In the Court of first instance, Sir Gorell Barnes, P., inclined to the view that *The Bellanoch*, whose engines were from time to time going full speed astern in order to clear the mud from the propeller, but which was not herself moving astern through the water, was excused from blowing the signals required by Art. 28, inasmuch as they might have proved misleading to *The Canning*, which was approaching with a duty to keep out of the way. This view was very strongly dissented from by

(*n*) *The Araxes* and *The Black Prince*, 15 Moo. P. C. 122. This case was decided under the Act of 1854; it is submitted that the decision would have been the same under the existing regulations. The observations in *The Arthur Gordon*, Lush. 270, with regard to the duty of a sailing ship to keep out of the way of a tug and her tow upon grounds of convenience, must be taken with caution.

(*o*) *The Agra* and *The Elizabeth Jenkins*, L. R. 1 P. C. 501.

(*p*) *The America*, 2 Otto, 432.

(*q*) (1907) P. 170; (1907) A. C. 269.

Article 27.

Fletcher Moulton, L. J. (*r*), in the Court of Appeal, who considered that Art. 27 "does not leave masters at liberty to consider to what extent they shall obey the regulations as to signals during a period of from five to twenty minutes before the collision, but only applies to cases in which, in the throes of danger, a departure from the strict observance of the rules is imperatively forced upon the master of a ship by the peril in which he is placed."

The learned Lord Justice further inclined to the view that Art. 27 has no application to Art. 28 at all, but that its operation is solely confined to the group of "Steering and Sailing Rules" (namely, Arts. 17 to 27), of which it forms the last.

In America, where a "whistling" rule similar to that of Art. 28 has been in force for many years, it has been held that a steamship signalling to another that she intends to depart from the regulations, and departing from them, is not in fault for such a departure if it was agreed to by the answering signal from the other ship. But strict proof was required that the assenting signal was given (*s*).

It would probably be held that where a ship is hailed by another to take a particular course, if she does so and a collision occurs, the latter could not be heard to say that the former was wrong for departing from the regulations (*t*).

Sound Signals for vessels in sight of one another.

ARTICLE 28.

Article 28.

Helm signals.

The words "short blast" used in this Article shall mean a blast of about one second's duration.

When vessels are in sight of one another, a steam vessel under way, in taking any course authorized or required by these rules, shall indicate that course by the following signals on her whistle or siren, viz.:—

One short blast to mean, "I am directing my course to starboard."

(*r*) (1907) P. 189, 190.

(*s*) *The Milwaukee*, 1 Brown, Adm. 313.

(*t*) See above, p. 5, and cases there cited.

Article 28.

Two short blasts to mean, "I am directing my course to port."

Three short blasts to mean, "My engines are going full speed astern."

This Article corresponds with Art. 19 of the Regulations of 1884, but it differs from it in the important substitution of "shall" for "may," and in the omission of the declaration that the use of the signals is optional. It has, by recent decisions, been placed beyond doubt, that a breach of Art. 28 brings a ship within the penalty imposed by 57 & 58 Vict. c. 66, s. 419 (*u*).

It may be noted that compliance with the rule is required where:

(i) The vessels are in sight of one another.

(ii) A steam vessel under way is taking a course.

(iii) Such course is authorized or required by these rules.

"In sight" does not mean in sight at any distance, but "in sight with reference to the manœuvres which a vessel is authorized or required to take, having regard to the other vessel approaching, for the purpose of avoiding collision . . ." (*x*).

"Course" does not mean "course by compass, but the action of the vessel" (*y*). The word may apparently be used equally in regard to the management of a vessel's helm and to that of her engines.

A tug under slight starboard helm in order to counteract the effect of the tide was held to have "taken a course" when she further starboarded her helm in order to pass under the stern of another vessel (*z*).

A vessel, which was dragging over mud and was from time to time putting her engines full speed astern to clear her propeller without herself moving astern through the water, was deemed by a majority of the Court of Appeal not to have taken a "course" (*a*).

Possibly it is unnecessary that in order to constitute

(*u*) *The Aristocrat*, (1908) P. 9; following *The Anselm*, (1907) P. 151.

(*x*) *Per* Alverstone, C. J., *The Bellanoch*, (1907) P. 170, at p. 181; (1907) A. C. 269.

(*y*) *Per* Alverstone, C. J., *ibid.* at p. 182; cf. *The Anselm*, *supra*.

(*z*) *The Aristocrat*, *supra*; but see *The Colgarth*, Ship. Gaz. Nov. 3rd, 1906.

(*a*) *The Bellanoch*, *supra*.

Article 28.

"taking a course" there should be any alteration at all in helm or engines. Persistence in a course originally taken for the ordinary purposes of navigation might amount to "taking a course" within the Article (*b*).

The words "authorized or required" have given rise to difficulty. They were judicially interpreted by Sir Francis Jeune, P., in *The Uskmoor* (*c*), and his interpretation was approved in the Court of Appeal in *The Anselm* (*d*) and *The Aristocrat* (*e*). "It has been sought to put a rather narrow interpretation on the rule. Of course the word 'required' is clear enough. There are certain things required by the rules to be done. The word 'authorized' is, however, very much larger, and I am inclined to think that a large interpretation ought to be given to it, and that it includes any course which, for the safety of the vessels, good seamanship requires to be taken with reference to the other vessel then in sight" (*f*). This definition, it may be observed, covers every course which "good seamanship" requires. It was contended in *The Anselm* that Art. 28 did not apply where a vessel was taking a course under Art. 27 or 29. It was decided, however, that, although a vessel may be acting under Art. 27 or 29, a breach of which article probably does not carry the statutory penalty (*g*), yet failure to indicate such action by whistle signal will involve a breach of Art. 28, and that the statutory penalty will attach to such breach.

In the case of *The Bellanoch* (*h*) the question arose, whether *The Bellanoch*, which was crossing the mud at the entrance to Monte Video harbour, and which was from time to time putting her engines full speed astern to clear her propeller, the last occasion being for the first three of the eight minutes preceding the collision, was obliged to sound her whistle to indicate that her engines were working full speed astern, to *The Canning*, a vessel which was proceeding down a dredged channel on a course nearly at right angles to that of *The*

(*b*) *The Aristocrat*, *supra*, at p. 21; *aliter*, where course is persisted in without reference to the other ship; cf. *The Mourne*, (1901) P. 68.
(*c*) *The Uskmoor*, (1902) P. 250, at p. 253.
(*d*) *Supra*.
(*e*) *Supra*.
(*f*) *The Uskmoor*, *supra*.
(*g*) *The Sans Pareil*, (1900) P. 267.
(*h*) *Supra*.

Article 28.

Bellanoch, and which had *The Bellanoch* on her starboard bow.

A majority of the Court of Appeal held that the engines of *The Bellanoch* were being put astern in the ordinary course of navigation, and that *The Bellanoch* was not taking a course with reference to *The Canning*: a finding which clearly distinguished the case from *The Anselm*. A decision of these points was, however, rendered unnecessary to the conclusions both of the Court of Appeal and of the House of Lords, since both those tribunals found that at the time when *The Bellanoch's* engines were put full speed astern, the relation of the vessels was not such as to make the Collision Regulations applicable, and further, that if *The Bellanoch* was guilty of any breach of duty in failing to sound, such breach could not by any possibility have contributed to the collision (*i*).

It has been held in America, where a similar rule has long been in force, that a steamship cannot by her whistle dictate to another a departure from the regulations (*k*). The American rules require an answering signal to be given. If after an exchange of signals either vessel departs from her agreed course she is held in fault (*l*). The signals must not be used by a ship at anchor (*m*), nor, as it would seem, under any circumstances other than those mentioned in Art. 28.

No vessel, under any circumstances, to neglect proper precautions.

ARTICLE 29.

Article 29.

Proper precautions are to be taken in all cases.

Nothing in these rules shall exonerate any vessel, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

(*i*) This must be taken to be the effect of the decision, see *The Corinthian*, (1909) P. 260.

(*k*) *The Milwaukee*, Brown. Ad. 313.

(*l*) *The St. John's*, 42 Fed. Rep. 75.

(*m*) *The Maling*, 110 Fed. Rep. 227.

Article 29.

This Article is identical with Art. 24 of the Regulations of 1884. It seems difficult to attribute to it any legal effect. It was inserted in the regulations, probably *ex abundante cautelâ*, and as a declaration, not to be overlooked by seamen, of the legal consequences of negligence.

In the *Sans Pareil* (*o*) it was suggested that bad seamanship may cause a ship to be deemed to be in fault under 57 & 58 Vict. c. 60, s. 419, and the Court was divided in opinion upon the point. It is submitted that Art. 29 cannot be infringed within the meaning of s. 419.

Precautions required by the ordinary practice of seamen.

The duty of those in charge of a ship to navigate her with due regard to the ordinary rules of seamanship, and under special circumstances to depart from the regulations, has been already referred to (*p*). What is required of seamen is ordinary skill and ordinary intelligence; they are not expected to foresee and provide against every accident. But where literal compliance with the regulations is not enough to avoid a collision, all must be done that a seaman of ordinary skill and intelligence would do to keep clear of the other ship (*q*). Where, for example, an alteration of the helm is not enough, the helm must be assisted by lowering the peak or letting go the foresheets (*r*). So, a vessel has been held in fault for not backing her yards (*s*).

The law as to what is proper care and skill in navigation and what are precautions required by the ordinary practice of seamen, is illustrated by numerous decisions, some of which are here collected.

Look-out.

First, as to look-out: If a ship is proved to have been negligent in not keeping a proper look-out she will be held answerable for all the reasonable consequences of her negligence. Though the other ship has no lights, it is negligence not to see and avoid her on a clear night (*t*); but if the absence of look-out clearly had nothing to do with the colli-

(*o*) (1900) P. 267. See *supra*, p. 54.
(*p*) See pp. 450 *seq.*, above.
(*q*) *The Jesmond* and *The Earl of Elgin*, L. R. 4 P. C. 1; *The City of Antwerp* and *The Friedrich*, *Inman* v. *Beck*, L. R. 2 P. C. 25.
(*r*) *The Lady Anne*, 15 Jur. 18; *The Stranger*, 6 Not. of Cas. 36, 38; *The Marpesia*, L. R. 4 P. C. 212; *The Ulster*, 1 Moo. P. C. N. S. 31; *The Zadok*, 9 P. D. 114, 117.
(*s*) *The James*, Swab. 55.
(*t*) *The Viola*, 59 Fed. Rep. 632.

Article 29.

sion, it will not be deemed to be a fault contributing to the collision (*u*).

The look-out must be vigilant and sufficient according to the exigencies of the case. The denser the fog and the worse the weather the greater the cause for vigilance. A ship cannot be heard to say that a look-out was of no use because the weather was so thick that another ship could not be seen until actually in collision. In *The Mellona* (*x*), Dr. Lushington said:—"It is no excuse to urge that from the intensity of the darkness no vigilance, however great, could have enabled *The Mellona* to have descried *The George* in time to avoid a collision. In proportion to the greatness of the necessity, the greater ought to have been the care and vigilance employed."

In ordinary cases one or more hands should be specially stationed on the look-out by day as well as at night. They should not be engaged upon any other duty; and they should be stationed in the bows, or in that part of the ship from which other vessels can best be seen (*y*). On board a Mersey ferry-boat the proper place for the look-out was said to be on the bridge between the paddle-boxes (*z*). When passing over a fishing ground a specially vigilant look-out must be kept to avoid fishing-boats (*a*). A vessel brought up in a frequented channel (*b*) should have an anchor watch ready to sheer her clear of an approaching vessel, or to give her chain (*c*). For a large steamship going eleven knots off Dungeness, a crowded part of the English Channel, on a hazy night, the Privy Council considered that one hand on the look-out was not sufficient (*d*). It was held negligence that an anchor

Anchor watch.

(*u*) *The Dexter*, 23 Wall. 69; *The Farragut*, 10 Wall. 337; *The Clarion*, 27 Fed. Rep. 128; *The George Murray*, 22 Fed. Rep. 117.

(*x*) 3 W. Rob. 7, 13.

(*y*) *The Diana*, 1 W. Rob. 131; 4 Moo. P. C. 11; *The Batavier*, 9 Moo. P. C. 286; *The Bold Buccleuch*, 1 Pr. Adm. Dig. 144; *The Glannibanta*, 1 P. D. 283; *The Belgenland*, 7 Davis, 355. See *The Morning Light*, 2 Wall. 550.

(*z*) *The Wirral*, 3 W. Rob. 56.

(*a*) *The Robert and Ann* v. *The Lloyds*, Holt, 55.

(*b*) But not, it seems, elsewhere: *The M. J. McCaldin*, 35 Fed. Rep. 330; *The Erastus Corning*, 25 Fed. Rep. 572.

(*c*) See *Lack* v. *Seward*, 4 Car. & P. 106; *Vanderplank* v. *Miller*, M. & M. 169; and *The Richmond* and *The E. Heipershausen*, 63 Fed. Rep. 1020; *The Guyandotte*, 39 Fed. Rep. 575; *The Altenower*, *ibid.* 118; *The Ogemaw*, 32 Fed. Rep. 919; *The Erastus Corning*, 25 Fed. Rep. 572; *The Oliver*, 22 Fed. Rep. 848; *The Rigaud*, 11 Quebec L. R. 382; *The Masters* and *The Raynor*, Brown. Adm. 342; *The Marcia Tribou*, 2 Sprague, 17.

(*d*) *The Germania*, 21 L. T. 44. In an appeal from a judgment of

Article 29.

watch was not kept on board a ship at moorings in the river Tyne, the weather being bad and threatening (*e*). On board a steamship in daylight in the Clyde, the pilot, an officer, and a hand (not properly qualified for the duty) were held to be a sufficient look-out (*f*).

The necessity in the Thames of a look-out on the forecastle head, to see craft low in the water under the ship's bows, was insisted upon in *The Hallett* (*g*).

Look-out astern.

Under the Regulations of 1863 it was held that a vessel was not necessarily in fault for not keeping a look-out astern on a clear night; although if she sees a vessel approaching her astern it is her duty to warn her of her danger (*h*). In America a vessel which damaged another by moving her propeller in dock was held in fault for not having a look-out astern (*i*); but it was held to be no negligence for a small "stern-wheeler" not to have a look-out astern, having regard to the practice in New York harbour and the scanty crew carried by such boats (*k*). Under the existing regulations a look-out astern must be kept in order to comply with Art. 10 as to showing a flare or stern light to an overtaking vessel.

It is the duty of a ship with another in tow to keep an especially vigilant look-out, because the tow cannot always see ahead (*l*). On the other hand, the fact that she is in tow will not excuse a vessel from keeping an adequate look-out, and a pilot vessel made fast to a sailing ship, which was being towed down the Bristol Channel, has been held in fault for failing in this respect (*m*).

The obligation of keeping a sharper look-out than is ordinarily required by law may be cast upon a ship by a local

a Court of Enquiry, suspending a master's certificate for not having set two men on the look-out when running through a roadstead, the judges of the Admiralty Division said that there was nothing in the circumstances of the case to require more than one man on the look-out; and they reversed the decision of the Court of Enquiry. *The Mary* and *The Rowland*, Adm. Ct., 11th July, 1881; cited in Murton's Wreck Enquiries, p. 196.

(*e*) *The Pladda*, 2 P. D. 34. As to the need for a watchman when fast to the shore, see *infra*, p. 476. See also *The Thetis*, Ship. Gaz., June 23rd, 1906, and March 15th, 1907.

(*f*) *Clyde Navigation Co.* v. *Barclay*, 1 App. Cas. 790, 798.

(*g*) Ad. Div. 9th August, 1887.

(*h*) *The Earl Spencer*, L. R. 4 A. & E. 431; *The City of Brooklyn*, 1 P. D. 276; *Kennedy* v. *The Sarmatian*, 2 Fed. Rep 911.

(*i*) *The Nevada*, 16 Otto, 154.

(*k*) *McFarland* v. *Selby Smelting and Lead Co.*, 17 Fed. Rep. 253.

(*l*) *The Jane Bacon*, 27 W. R. 35.

(*m*) *The Harvest Home*, (1905) P. 177.

Article 29.

rule of navigation. In the Thames, for example, a local rule of navigation requires a vessel, before rounding certain points, to ascertain whether there is any vessel approaching her in the opposite direction on the other side of the point (*n*).

Where a vessel in a river ran into another coming out of dock, it was held that the duty of the look-out was to see that the channel was clear; and that it was not negligence on his part not to have reported the vessel coming out of dock (*o*).

Where to keep a good look-out glasses are necessary, it would probably be held negligence not to use them (*p*). In an American case the use of a night-glass on board a steamer coming into harbour was held to be necessary (*q*).

Watchman for ship moored to shore.

Whether it is negligence to leave craft moored to the shore or other barges in dock or in tidal waters without a watchman depends on the danger to be anticipated, having regard to the position of the barge (*r*). Evidence that, had there been a man left in charge, he could in fact have taken steps to avert collision is not conclusive in such cases. In determining the danger to the barge, if any, to be anticipated from leaving her unattended, evidence as to the local custom in the matter is relevant, the test in such cases being whether in the circumstances such conduct was reasonable (*s*).

American cases as to look-out.

The requirements of the law in America as to look-out have been stated in many cases in stringent terms. In *The Sunnyside* (*t*) the Supreme Court held that it is the duty of a sailing ship to watch the movements of an approaching steamship, in order that, if the steamship fails to comply with the law and keep out of the way, she may herself be able to avoid a collision.

In another case it was held that the absence of a look-out

(*n*) *The Margaret*, 9 App. Cas. 873, 879.

(*o*) *The Calabar*, L. R. 2 P. C. 238.

(*p*) See *The Hibernia*, 2 Asp. M. C. 454.

(*q*) *The Ville du Havre*, 7 Bened. 328; but see *The Avon*, 22 Fed. Rep. 905.

(*r*) *The Western Belle*, 10 Asp. M. C. 279; cf. *The Scotia*, 6 Asp. M. C. 541; *The Dunstanborough*, (1892) P. 263; *The Hornet*, (1892) P. 361; *The St. Aubin*, (1907) P. 60. In America it appears to be the practice in New York harbour to leave small craft in the slips unattended; and it has been held that there is no negligence in doing so: *Campbell* v. *Pennsylvania Rail. Co.*, 85 Fed. Rep. 462.

(*s*) *Sharpsburg Sand Co.* v. *Monongahela River Consolidated Coal and Coke Co.*, 145 Fed. 424.

(*t*) 1 Otto, 208; followed in *The General*, 82 Fed. Rep. 830. Cp. *The Manitoba* (a case of two steamships), 15 Davis, 97.

Article 29.

on board a vessel will cause her to be held in fault for a collision, unless it is proved that the other ship was seen as soon as it was possible to see her, and that the proper steps to avoid her were taken, and as soon as it was possible to take them (*u*).

The Supreme Court of the United States has held that the officer in charge of the deck is not a sufficient look-out: that for a first-class ocean steamship two men with no other duty to perform constitute a proper look-out, and that they should be stationed forward in the ship's bows (*x*), or in the part of the ship from which other vessels can best be seen (*y*). These, however, are questions of proper nautical management, and it would be dangerous to rely too much on decisions which depend so largely on particular circumstances. The rule that there must be one or more men specially stationed on the look-out, and that the officer in charge or the man at the wheel is not sufficient, has been established by numerous cases (*z*).

In *The Ariadne* (*a*) the Supreme Court said that the rigour of the requirement as to an efficient look-out rises according to the speed and power of the vessel and the chance of meeting other ships. Thus, a vessel entering a harbour at night should have all the crew on deck, and keep as sharp a look-out as is possible (*b*).

It has been held by the Supreme Court that the absence of a look-out was not excused by the fact that it was day-time and all hands were engaged in reefing (*c*); or that they were repairing damage caused by an accident (*d*). The duty of ferry-boats, and of vessels crossing the track of ferry-boats, to keep a specially good look-out has been insisted upon in many cases (*e*).

(*u*) *The Atlas*, 10 Blatchf. 459.
(*x*) *Chamberlain* v. *Ward*, 21 How. 548, 570.
(*y*) *The Morning Light*, 2 Wall. 550.
(*z*) *The Northern Indiana*, 3 Blatchf. 92; *The Comet*, 9 Blatchf. 323; *The Parkersburg*, 5 Blatchf. 247; *The Douglass*, Brown, Ad. 105; *The Nabob*, *ibid.* 115; *The Blossom*, Olcott, 188.

(*a*) 13 Wall. 475.
(*b*) *The Scioto*, Davies, 359.
(*c*) *Catharine* v. *Dickinson*, 17 How. 170; *Thorp* v. *Hammond*, 12 Wall. 408. See also *The H. P. Baldwin*, Brown, Ad. 300.
(*d*) *Whitridge* v. *Dill*, 23 How. 448.
(*e*) *The America*, 10 Blatchf. 155; *Ince* v. *East Boston Ferry Co.*, 106 Mass. Rep. 149.

Article 29.

Where the absence of a look-out in no way contributed to the collision, the ship will not be held in fault merely because there was no look-out (*f*). But *aliter* where, notwithstanding fault in the other ship (carrying away of tiller rope), the collision might have been avoided by a better look-out (*g*).

Sufficiency of the crew.

A vessel under way must have on board a sufficient crew to work her for the voyage on which she is engaged. The crew that is usual under the particular circumstances will be held to be sufficient. Thus, two hands have been held sufficient for a sailing barge in the Thames (*h*). When in dock or harbour she should be provided with sufficient hands to tend her, having regard to her position, the character of the dock or harbour, and to ordinary changes of the weather (*i*). A steamer having been found to blame for damaging with her propeller a barge that was properly moored astern of her, the barge was held also to blame for having no one on board: but for this omission, the collision might, perhaps, have been avoided, and the barge might, at any rate, have been beached, and the damage diminished (*k*). In *The Hornet* (*l*), a somewhat similar case, the collision was in Tilbury (non-tidal) dock, and the barge, which was run into and sunk by a tug, was held to be free from blame, though no one was on board her at the time of the collision. The question to be answered in such case is, whether, having regard to the position of the barge, the danger to be anticipated to the barge in leaving her unattended is so slight as to justify her being so left (*m*). Where a new ship was in collision on her trial trip, when she had not on board her full complement of officers and crew, she was not therefore held in fault, there being on board a sufficient crew to work her (*n*). It is negligence for the officer of a ship at moorings in a river to be ashore unnecessarily when the weather is bad and threatening (*o*). The officer in charge should be always on

(*f*) *The Fannie*, 11 Wall. 238; *The Havana*, 54 Fed. Rep. 411.

(*g*) *The Riversdale*, 53 Fed. Rep. 286.

(*h*) *The Minna*, L. R. 2 A. & E. 97.

(*i*) *The Excelsior*, L. R. 2 A. & E. 268; *The Patriotto* and *The Rival*, 2 L. T. 301.

(*k*) *The Scotia*, 6 Asp. M. C. 541; *The Dunstanborough*, (1892) P. 363, note.

(*l*) (1892) P. 361.

(*m*) *The Western Belle*, 10 Asp. M. C. 279.

(*n*) *The Clyde Navigation Co.* v. *Barclay*, 1 App. Cas. 790.

(*o*) *The Kepler*, 2 P. D. 40.

deck; he should not leave the deck in charge of a junior officer when another vessel is approaching, so as to involve risk of collision (*p*); but it has been held in America that it is not negligence for the officer in charge of the deck, being a competent man, not to call the master when another ship is approaching with risk of collision (*q*). Nevertheless, in urgent cases it is prudent to do so. In the case of a collision between sailing smacks, it being admitted that one of them was in fault, the other was held to be also in fault for not having more than one hand on deck, whereby the collision might have been avoided; this decision, however, was reversed on appeal, and the reversal was upheld (*r*). In a fog there should be strength at the helm sufficient to alter the ship's course as quickly as possible on the order being given (*s*). Article 29.

A vessel under way is bound to keep clear of another at anchor. The rule seems to be the same in all cases where one of the ships is under way and the other, though not at anchor, is for any other reason unable to keep out of the way; as where she is fishing and fast to her nets, or in stays, or disabled (*t*). And it applies though the ship at anchor is brought up in the fairway, or elsewhere in an improper berth. "It is the bounden duty of a vessel under way, whether the vessel at anchor be properly or improperly anchored, to avoid, if it be possible with safety to herself, any collision whatever" (*u*). If one ship properly lighted (if at night) is fast to the shore, or lying at established moorings, it can scarcely happen that the other would not be held in fault for the collision (*x*). But under such circumstances she must not be allowed to sheer with her head or stern into the navigable channel (*y*) Where a steamship in the daytime ran into a sailing ship brought up in a river 500 Keeping clear of ship at anchor.

(*p*) *The Arthur Gordon* and *The Independence*, Lush. 270; *The Khédive* and *The Voorwaarts*, 5 App. Cas. 876.

(*q*) *The Maverick*, 75 Fed. Rep. 845.

(*r*) *The General Gordon*, 7 Asp. M. C. 317.

(*s*) *The Europa*, 14 Jur. 627.

(*t*) See above, p. 30.

(*u*) *Per* Dr. Lushington in *The Batavier*, 2 W. Rob. 407; and see *The Dura*, 1 Pritch. Adm. Dig. 174; *The Marcia Tribou*, 2 Sprague, 17; but see *The Kjobenhavn*, 2 Asp. M. C. 213.

(*x*) See *The Secret*, 1 Asp. M. C. 318; and *Culbertson* v. *Shaw*, 18 How. 584; *Portevant* v. *The Bella Donna*, Newb. Adm. 510; *The Bridgeport*, 7 Blatchf. 361; 14 Wall. 116; *The Granite State*, 3 Wall. 310; *The Helen Cooper* and *The R. L. Mabey*, 7 Blatchf. 378.

(*y*) *The St. Lawrence*, 19 Fed. Rep. 328.

Article 29.

yards wide, it was held by an American Court that the steamship was solely in fault, although the sailing ship was riding with her sails up, sheering about, and with no anchor watch (*z*).

A vessel hove-to has not the privileges of a ship at anchor. She is under way, and in case of risk of collision must comply with the regulations so far as she is able to do so. She must not rely upon the other ship keeping out of her way (*a*).

Ship at anchor, bringing up, or getting under way.

The following cases illustrate the requirements of the law as to the duty of a ship when coming to an anchor, when brought up, and when getting under way:—

Foul berth.

A ship in bringing up must not give another a foul berth. "If one vessel anchors there, and another here, there should be that space left for swinging to the anchor that in ordinary circumstances the two vessels cannot come together. If that space is not left, I apprehend it is a foul berth" (*b*). In an American case it was held that a ship at anchor is entitled to have room to swing, not only with the scope of cable which she has out at the time when the other ship takes up her berth, but with as long a scope as may be necessary to enable her to ride in safety (*c*).

If a ship gives another a foul berth she cannot require the latter to take extraordinary precautions to avoid a collision (*d*). It has been held that in the Mersey a cable's length between the two ships is a clear berth (*e*). This, however, cannot be laid down as a general rule, for at this distance a laden vessel riding to the tide might, in swinging, come dangerously close to a light vessel riding athwart the tide. And not only must a vessel not bring up so close to another as not to give her room to swing, but she must not bring up in such a place that she endangers the other ship. She should not bring up directly ahead, or in the stream of another ship, having regard to the current and also to prevailing winds. If she brings up directly in the hawse of another ship, or elsewhere in the neighbourhood of another ship, there should be such a distance between them that if either of them drives

(*z*) *The Planet*, Brown, Adm. 124.
(*a*) *Supra*, pp. 348, 390.
(*b*) *Per* Dr. Lushington in *The Northampton*, 1 Spinks, 152, 160.
(*c*) *The Queen of the East* and *The Calypso*, 4 Bened. 103.
(*d*) *The Vivid*, 1 Asp. M. C. 601.
(*e*) *The Princeton*, 3 P. D. 90.

Article 29.

or parts from her anchors she may have the opportunity to keep clear (*f*). Where a ship, in bad weather, took up a berth two cables' length to windward of another, in an anchorage where there was plenty of room, and then rode with only one anchor down and that not her best, she was held in fault for a collision with the ship to leeward, against which she was driven when her cable parted in a heavy squall (*g*). Where a vessel gave another a foul berth, and subsequently drove against her in a hurricane, it was held to be an inevitable accident (*h*).

If a vessel takes up a berth alongside another where she takes the ground and falls over and injures the other, she will be held in fault (*i*). A vessel voluntarily taking up such a berth in a dock does so at her own risk (*k*). So where two colliers were beached near each other for the purpose of discharging cargo, it was held that it was the duty of the last comer to moor head and stern, and in such a way as not to foul the other when the wind shifted (*l*).

Coming to an anchor.

In coming to an anchor caution must be used not to injure or embarrass other ships. A vessel rounding-to, so as to bring her head upon tide, should, before altering her helm, look round and see that all is clear, and that her manœuvre will not endanger other ships (*m*). The omission to warn a ship astern of her intention to bring up has been held neglect of a "precaution required by the special circumstances of the case" (*n*).

A ship, having lost one anchor off Dungeness, in attempting to bring up in the Downs lost her second anchor, and drove foul of another vessel. It was held that, the weather being heavy, she was in fault for attempting, with only one

(*f*) *The Cumberland* (Vice-Ad. Court, Lower Canada), Stuart's Rep. (1858), p. 75; *The Egyptian*, 1 Moo. P. C. N. S. 373.

(*g*) *The Volcano*, 2 W. Rob. 337; *The Maggie Armstrong* and *The Blue Bell*, 14 L. T. 340.

(*h*) *The Innisfail* and *The Secret*, 35 L. T. 819.

(*i*) *The Indian* and *The Jessie*, 12 L. T. 586; *The George* and *The Lidskjalf*, Swab. 117; *The America*, 38 Fed. Rep. 256; *The Addie Schlaefer*, 37 Fed. Rep. 382; *The Behera*, 6 Fed. Rep. 400.

(*k*) *The Patriotto* and *The Rival*, 2 L. T. 301.

(*l*) *The Vivid*, 1 Asp. M. C. 601.

(*m*) *The Ceres*, Swab. 250; *The Shannon*, 1 W. Rob. 463; *The Philotaxe*, 37 L. T. 510.

(*n*) *The Philotaxe*, 2 Asp. M. C. 512; and see *The Queen Victoria*, 7 Asp. M. C. 9; *The Helen Keller*, 50 Fed. Rep. 142.

Article 29.

anchor, to bring up ahead of another vessel without the assistance of a tug which she might have taken (*o*).

In coming to an anchor in a crowded roadstead or harbour, proper care must be used to shorten sail in time, and not to run in at too great speed. A vessel running into Stangate Creek, in the Medway, was held in fault for a collision caused by her running in under too great a press of sail (*p*).

Where a ship delayed taking up her berth until night, and in consequence of the darkness injured another, she was held in fault for not having brought up by daylight, when she might have done so in safety (*q*).

Where, in Hong Kong harbour, a collision might have been avoided if the starboard anchor had been let go, and it could not be let go because it was unshackled, it was held to be negligence not to have had the anchor ready (*r*).

By Art. 14 of the Convention contained in the first schedule to the Sea Fisheries Act, 1883 (46 & 47 Vict. c. 22), it is illegal for a fishing boat to bring up between sunset and sunrise on ground where drift-net fishing is actually going on. This Article applies only in the waters and to the vessels mentioned in the Act.

Precautions to be taken when at anchor.

After coming to an anchor, those on board must show proper skill and seamanship in keeping their vessel from driving and endangering other craft. If a ship parts from her anchor, when with proper care she might have ridden in safety, and drives against another vessel, the collision will be held to have been caused by the negligence of the former, although after parting from her anchor the collision was inevitable, and all was done that could be done to avoid it. If she drives from her anchor in consequence of her yards not having been sent down, or because she was not tended or made properly snug, she will be held in fault (*s*). Where it is customary and prudent to moor, a vessel neglecting to do so will be held in fault (*t*); a foul anchor will not excuse

(*o*) *The Annot Lyle*, 6 Asp. M. C. 50.

(*p*) *The Neptune the Second*, 1 Dod. 467; *The Secret*, 1 Asp. M. C. 318; *The Earl Spencer*, L. R. 4 A. & E. 431; *The Masten*, Brown. Ad. 436.

(*q*) *The Egyptian*, 1 Moo. P. C. N. S. 373.

(*r*) *The City of Peking*, 14 App. Cas. 40.

(*s*) *The Excelsior*, L. R. 2 A. & E. 268; *The Christiana*, 7 Moo. P. C. 160.

(*t*) *The Gipsy King*, 2 W. Rob. 537.

Article 29.

her (*u*). The duty to keep an anchor watch has been already referred to (*x*). If a vessel at anchor can avoid a collision by the use of her helm, she will be held in fault if, having the opportunity to do so, she does not sheer clear (*y*); but the proof must be clear that the sheer would have avoided the collision (*z*).

If a ship drives from her anchor or parts her chain, and a collision may be avoided by employing a tug which is available, it is negligence not to employ her (*a*).

Where a ship gave another a foul berth in the Downs, and drove against her in a gale of wind while riding at single anchor with forty-five fathoms of chain, it was held that, although the other vessel drove also, she was herself solely to blame (*b*).

Insufficient ground tackle, or riding by a single anchor when there should have been two down, or failure to drop a second anchor when driving (*c*), will make a ship liable for a collision so caused (*d*). A tug in charge of an unwieldy tow of car floats in New York harbour was overpowered by her tow in a heavy squall, and, having let go her anchor, which did not hold, she drove against a third ship. It was held that she was in fault for not having an anchor that would hold her (*e*). The ship must be duly tended while at anchor. A ship which goes foul of another through improperly breaking her sheer will be held in fault (*f*). Where a ship was riding in an open and crowded roadstead in blowing weather, without having sent down her topgallant and main-royal yards, she was held in fault for a collision caused by her driving (*g*). If a ship in a dock or harbour subject to the Harbours, Docks, and Piers Clauses

(*u*) *Hastorf* v. *Mayor, &c., City of New York*, 64 Fed. Rep. 869.

(*x*) *Supra*, p. 472.

(*y*) See *supra*, p. 33.

(*z*) *The Howard B. Peck*, 48 Fed. Rep. 334.

(*a*) *The Arran*, 9 Quebec L. R. 278; and see *The Annot Lyle*, p. 480, *supra*.

(*b*) *The Maggie Armstrong* v. *The Blue Bell*, 14 L. T. 340.

(*c*) *The Mary Fraser*, 26 Fed. Rep. 872.

(*d*) *The Massachusetts*, 1 W. Rob. 371; *The Despatch*, 14 Moo. P. C. 83; *The Volcano*, 2 W. Rob. 337. And see *The William Lindsay*, L. R. 5 P. C. 338; *Allen* v. *Quebec Warehouse Co.*, 12 App. Cas. 101.

(*e*) *The J. H. Rutter*, 35 Fed. Rep. 365.

(*f*) See *The Peerless*, Lush. 30.

(*g*) *The Christiana*, 7 Moo. P. C. 160; and see *The Ruby Queen*, Lush. 266; *The Excelsior*, L. R. 2 A. & E. 268.

Article 29.

Act, 1847, is insufficiently moored, after notice from the harbour-master to provide proper fasts, she incurs a penalty of 10*l.* (*h*). It has been held negligence not to increase moorings where the state of the weather required it (*i*).

It was held in America that a vessel in a gale of wind, with another brought up near her, was in fault for not taking timely precautions for avoiding a collision caused by the other driving on her (*k*). In another American case (*l*) it was held that where a ship at anchor drives and comes into collision with another at anchor, the burden is on the former, alleging inevitable accident, to prove that she had a proper watch on deck, that she discovered the dragging at once, that she took proper measures to prevent it, and that her ground tackle was sufficient.

A vessel that, by dragging her anchors, gives another a foul berth, cannot require the latter to shift. She must herself get under way (*m*), or slip. It will be no excuse that her cables were shackled so that she could not slip (*n*).

If a ship is brought up by her own people, or by a compulsory pilot, in an improper berth, so as to endanger other ships, she must be shifted and taken to a proper berth as soon as possible (*o*). Where a ship was compelled to shift her berth in bad weather, owing to her having only one anchor down, and in doing so, although proper precautions were taken, she came into collision, it was held that she was in fault for the collision, because of her original neglect in riding to a single anchor (*p*).

A ship in New York harbour was lying at a wharf with her stern projecting into the slip of a ferry-boat. She was warned of her danger and did not shift. It was held that the ferry-boat was not in fault for a collision which followed, the ferry-boat having done her best to avoid it (*q*). In another case, a ship moored to a wharf so that her bows projected into a

(*h*) 10 & 11 Vict. c. 27, s. 61.

(*i*) *The John Harley* and *The William Tell*, 13 L. T. 413; *The Louisiana*, 3 Wall. 164.

(*k*) *The Sapphire*, 11 Wall. 164.

(*l*) *The Dutchess*, 6 Bened. 48.

(*m*) *The Wallace*, 41 Fed. Rep. 894.

(*n*) *The Gevalia*, 39 Fed. Rep. 47.

(*o*) *The Woburn Abbey*, 20 L. T. 621. As to the duty of the master to shift, although the pilot is on board, if he is no longer in charge, see p. 220, *supra*.

(*p*) *The Despatch*, 3 L. T. 219; 14 Moo. P. C. 83.

(*q*) *The City of Lynn*, 11 Fed. Rep. 339.

Article 29.

fairway, narrowing it but not so as to prevent other ships using it. Another ship subsequently moored to the opposite wharf, so as to block the fairway. A third ship attempted to enter and fouled the first ship. It was held that the first ship ought to have shifted her berth after the second ship made fast to the wharf, and that she and the third ship were both in fault (*r*).

It was held negligence in a ship in threatening weather to ride to a buoy in the river Tyne, with her chain cables unbent and with no anchor ready to let go in case of parting from the buoy. Even in such situations, if the weather is threatening, or there is cause for special precautions, an anchor watch must be kept and hands enough must remain on board to tend the ship (*s*).

As a general rule, a ship cannot take up or keep a berth by mooring to a buoy at a particular spot. It has been suggested that in particular localities there may be a custom enabling her to do so (*t*). *Sed qu.*

The parting of a cable, the giving way of a buoy to which the ship was moored, and the jamming of the cable on the windlass on letting go the anchor, have been held to be inevitable accidents (*u*).

Making fast to another vessel, instead of to the shore, has been held to be negligence (*x*); and a vessel that did so has been held liable for damage caused by both going adrift (*y*).

Where a ship, A., was made fast to another, B., and B., in getting under way, injured A., it was held in America that B. was in fault, although the accident might have been caused partly by the lines by which A. was made fast to B., and which A. had not let go when desired to do so by B. It was held to be negligence in B. to have got under way without seeing that the lines were let go (*z*). And so, in England, a steamer was recently held in fault for injuring, by the move-

(*r*) *The Margaret J. Sanford*, 37 Fed. Rep. 148; *The Mary Powell*, 36 Fed Rep. 598.

(*s*) *The Pladda*, 2 P. D. 34; *The Kepler*, 2 P. D. 40. As to the duty to have chains bent, see *The City of Peking*, 14 App. Cas. 40.

(*t*) *The Vivid*, 1 Asp. M. C. 601.

(*u*) See *supra*, pp. 9, 33.

(*x*) *The Atlas*, 2 Mar. Law Cas. O. S. Dig. 1480.

(*y*) *Pangburn* v. *Gunn*, 4 Fed. Rep. 35.

(*z*) *The Thornton*, 2 Benecl. 129.

Article 29.

ment of her propeller, a barge that was properly moored astern of her (*a*).

By direction of a wharfinger a lighter was made fast to the wharf at a particular berth, and, in order to make room for her, a schooner was ordered to shift. The lines by which the lighter was made fast were slacked by the surging caused by a passing steamer, and the lighter struck the schooner. It was held that both the lighter and the schooner were in fault; the lighter for not having made fast properly, and the schooner for mooring too close to the lighter (*b*).

Bringing up in a fairway or improper place.

In harbours and waters where there are local rules, or an established custom as to the proper anchorage ground, a vessel would be held in fault for a collision caused by her bringing up elsewhere. But if she were compelled to bring up and continue to lie in the fairway it would be otherwise (*c*). Thus, where a steamer, while going up the Thames on a flood tide, was compelled by the density of the fog to anchor in the fairway contrary to the Thames regulations, and the fog continued such that there was no reasonable opportunity of moving her, she was held free from blame for collision with another steamer coming up after her (*d*). If there is no rule or custom requiring her to bring up out of the fairway she may anchor there, although directly in the track of ships. Thus, a vessel brought up in the Mersey directly in the track of the ferry steamers was held not to be in fault for lying there (*e*). In America it is held that if a vessel does bring up in the track of ferry-boats, as she is at liberty to do, she must keep a vigilant look-out and warn the ferry-boat of her position (*f*).

The obligation on a ship under way to keep clear of another at anchor, as before stated (*g*), applies although the ship at anchor is in an improper berth. And a vessel brought up in a berth which is improper only in the sense that it is an exposed and dangerous position does not thereby contribute

(*a*) *The Scotia*, 6 Asp. M. C. 541.
(*b*) *The Greenpoint*, 18 Fed. Rep. 186.
(*c*) *The Kjobenhavn*, 2 Asp. M. C. 213; and see *The Clarita* and *The Clara*, 23 Wall. 1.
(*d*) *The Aguadillana*, 6 Asp. M. C. 390.
(*e*) *The Lancashire*, L. R. 4 A. & E. 198.
(*f*) *The D. S. Gregory*, 6 Blatchf. 528; *The Hudson*, 5 Benedict. 206; *The Exchange*, 10 Blatchf. 168; and see *supra*, p. 384.
(*g*) *Supra*, pp. 29, 30.

Article 29.

to a collision caused by another ship negligently driving into her (*h*). But when a barge in the Thames was brought up in an exposed position, and was sunk partly by the swell of a passing steamer, it was held that the negligence in bringing up where she was exposed to the steamer's wash partly caused the loss, and the suit against the steamship was dismissed (*i*).

Slipping to avoid a collision.

A vessel at anchor is not justified under all circumstances in holding on when by slipping she could avoid a collision. A vessel in Falmouth harbour was driving in a gale of wind towards the breakwater. She could have avoided the breakwater by slipping from her anchor and getting under way. She did not slip in time, went ashore, and did injury to the breakwater. It was held that she was liable for the damage because of her neglect in not slipping in time (*k*). The value of an anchor and chain slipped to avoid collision may be recovered if the danger was caused by the fault of the other ship (*l*).

Getting under way.

A vessel getting under way unnecessarily in bad weather, with a number of other ships about her, would probably be held in fault for a collision which would not have occurred if she had lain fast (*m*). So, a ship getting her anchor in a strong tide, which necessarily carried her across the bows of ships bound into harbour, was held in fault for tripping her anchor at the moment when other ships were crossing her as she drove (*n*). The duty of a heavy ship to exercise more than ordinary caution in getting under way, and of other ships to keep clear of her, has been insisted upon by the American Courts (*o*).

A vessel which was moved from one dock to another by a tug at night was held in fault for a collision with a ship at

(*h*) *The Despatch*, 14 Moo. P. C. 83.

(*i*) *The Duke of Cornwall*, 1 Pr. Adm. Dig. p. 201.

(*k*) *The Ulla*, L. R. 2 A. & E. 29, n.; 19 L. T. 89. Cf. *The Sapphire*, 11 Wall. 164; *The Gevalia*, 39 Fed. Rep. 47.

(*l*) *Supra*, p. 27. So a tow cast off to avoid collision may, it seems, recover: *The Mount Hope*, 84 Fed. Rep. 910.

(*m*) *The Carrier Dove*, Br. & Lush. 113; *The Julia M. Hallock*, 1 Sprague, 539; *O'Neil* v. *Sears*, 2 Sprague, 52; *The Thornton*, 2 Bened. 429. The last three are American decisions.

(*n*) *The John S. Smith*, 27 Fed. Rep. 398.

(*o*) *The City of Paris*, 14 Blatchf. 531; *The Hudson City*, 38 Fed. Rep. 416; *The Greenpoint*, 31 Fed. Rep. 231 (ferry-boat whose view was obstructed by car float).

Article 29.

anchor. It was held that under the particular circumstances she had no right to be under way at all (*p*).

In *The John Fenwick* (*q*), it was held to be the duty of a vessel casting off from her moorings at night to warn an approaching vessel by exhibiting a light.

In America, it has been held that a ferry steamer starting from her slip when there was another vessel in her way which she ought to have seen (*r*), or a vessel which she knows to be brought up in her track, but which, owing to a heavy snow-squall, she cannot see (*s*), is in fault for a collision with the vessel riding.

A tug salvor started to tow to sea a yacht brought up on a lee shore, without getting up the yacht's anchor. The anchor fouled that of another yacht, which consequently drove ashore and was damaged. It was held, in America, that the tug was liable (*t*).

A schooner, not being able to get her anchor, set her sails to break it out of the ground. In consequence of having her canvas set, she fouled another schooner at anchor. She was held in fault; and the crew of the other schooner not to be in fault for not giving her chain, which might have avoided the collision (*u*).

In shifting berth in dock or elsewhere, if check lines are necessary to control the shipway in a high wind, it is negligence not to use them (*x*).

Riding by a lightship.

If a vessel rides by, or makes fast to, or runs foul of, any lightship or buoy, in addition to the obligation to make good all damage, she incurs a penalty of fifty pounds (*y*).

Ship in stays; precautions before going about.

A vessel in stays—"in irons"—is almost as helpless for the purpose of keeping out of the way of another as a ship at anchor. It is the duty of other ships to keep clear of her. Before going about it is the duty of those on board "to take a due look round beforehand to ascertain that no ship is in the neighbourhood likely to come upon them" (*z*).

(*p*) *The Borussia*, Swab. 94.
(*q*) L. R. 3 A. & E. 500.
(*r*) *The Columbus*, Abbott, 384.
(*s*) *The Rockaway*, 19 Fed. Rep. 449; *The D. S. Gregory*, 6 Blatchf. 528.
(*t*) *The Addie B.*, 43 Fed. Rep. 163.
(*u*) *The Melvina*, 43 Fed. Rep. 77.
(*x*) *The British Empire*, 24 Fed. Rep. 493; and cases *supra*, p. 228.
(*y*) 57 & 58 Vict. c. 60, s. 666.
(*z*) *The Sea Nymph*, Lush. 23; see also *The Ida* and *The Wasa*, 15 L. T. 103; *The Allan* and *The Flora*, 14

Article 29.

If weather permits, a ship must have such canvas on her that she can be kept under command and be able to stay (*a*). Upon similar grounds, it would seem to be negligence in a ship to be hove-to unnecessarily in the track of ships, a vessel hove-to being almost helpless, and therefore an obstruction to the navigation (*b*).

It has been held by the Privy Council that a ship should not wear without reason when she can stay; and a ship has been held in fault for a collision with another astern when she wore unnecessarily (*c*). In America a schooner wearing so close ahead of another ship that the latter could not clear her was held in fault (*d*).

Missing stays.

If a vessel misses stays the duty of those on board is to get her under command again as soon as possible (*e*).

Ships working to windward in company.

Where it is the duty of a ship under the regulations to keep out of the way, she should not stand so close to the other ship, before going about, that if she misses stays a collision must take place. It will be no excuse that she was struck by a squall while in the act of going about (*f*). A full-rigged ship, with the wind aft, meeting a brig and a schooner, both close-hauled on the starboard tack, came into collision with the brig, owing to the sudden and unexpected going about of the schooner. It was held that she ought not to have stood so close to the other ships as to make a collision inevitable if either of them went about (*g*). So, a sailing ship is in fault if she goes about unnecessarily under the bows of a steamship (*h*).

Where two ships are turning through a narrow channel, one astern of the other and on the same tack, the duty of the sternmost ship is to keep a good look-out, and be ready to go about, if necessary, the instant the other goes about, so as not to risk a collision by standing on while the other is in

L. T. 860; *The Eleanor* and *The Alma*, *ibid.* 240.

(*a*) *The Stirlingshire* and *The Africa*, 2 Mar. Law Cas. O. S. Dig. 672; *The Falkland* and *The Navigator*, Br. & Lush. 204.

(*b*) See *supra*, p. 390.

(*c*) *The Falkland* and *The Navigator*, *ubi supra*.

(*d*) *The Saxonia*, 2 Mar. Law Cas. O. S. 417.

(*e*) *The Kingston-by-Sea*, 3 W. Rob. 152; *The Lake St. Clair* and *The Underwriter*, 5 Asp. M. C. 361.

(*f*) *The Kingston-by-Sea*, *ubi supra*; *The Plato* and *The Perseverance*, Holt, 262.

(*g*) *The Mobile*, Swab. 69; *ibid.* 127.

(*h*) See *The Orwell*, *supra*, p. 415.

Article 29.

stays, or has not gathered way on the other tack (*i*). It seems to have been considered by the Privy Council that a ship in stays, or just gathering way on the port tack, should apprise another ship approaching her on the starboard tack of her inability to keep out of the way (*k*). But a sailing ship turning up the Thames was held not to blame for giving no notice to a steamship astern of her intention to go about (*l*).

Rule in America as to beating out tacks.

The rule in America as to ships working to windward in narrow channels is that they must "beat out their tacks," and not go about before the depth of water or exigencies of the navigation require it (*m*). Vessels are expected to know the channel and the point at which other ships will be compelled to go about (*n*). A ship going about before she gets to the edge of the channel, and thereby causing a collision with a passing steamship, was held in fault (*o*). But the rule as to "beating out tacks" does not apply so as to preclude a ship from going about before she reaches the shoal water in order that she may be able to weather a point of land, or other object, on the next tack (*p*); nor has another vessel, whose duty it is to keep out of the way, a right to assume that she will go about as soon as she reaches the edge of the tide or eddy (*q*). The rule does not appear to have been expressly recognized in any Court in this country. In *The Palatine* (*r*), where there seems to have been room for its application, it was not referred to.

Where two vessels were beating to windward in company on the same tack, and the one to leeward had to go about to clear a third ship, the vessel to windward was held in fault for not having observed the other tacking, and was held liable for a collision with her which followed. It was held that she ought to have gone about at the same time as the vessel to leeward (*s*).

(*i*) *The Priscilla*, L. R. 3 A. & E. 125.

(*k*) *The Lake St. Clair* and *The Underwriter*, 3 Asp. M. C. 361; and see *The Leonidas*, Stuart's Vice-Ad. Rep., Lower Canada (1858), p. 226.

(*l*) *The Palatine*, 1 Asp. M. C. 468.

(*m*) *Thorp* v. *Hammond*, 12 Wall. 408; *The Empire State*, 1 Bened. 57; *The Bridgeport*, 6 Blatchf. 3; *The Charlotte Raab*, Brown, Adm. 453.

(*n*) *The Nellie D.*, 5 Blatchf. 245.

(*o*) *The Nereus*, 3 Bened. 238.

(*p*) *The Vicksburg*, 7 Blatchf. 216; *The Empire State*, *supra*.

(*q*) *Haight* v. *Bird*, 26 Fed. Rep. 539.

(*r*) 1 Asp. M. C. 468.

(*s*) *The Commodore Jones*, 25 Fed. Rep. 506.

Article 29.

Whether a ship, being in stays, is required to hold herself in stays to allow another vessel to pass, is not clear. Two American cases are contradictory on the point. In *The Empire State* (*t*) the Court said that it is the duty of a ship to beat out her tack and come about on the other tack with proper despatch; and that "she is not obliged to remain in the wind for a steamer to pass her." On the other hand, in *The W. C. Redfield* (*u*), it was held that a sailing ship was in fault for not holding herself in stays to allow a tug and her tow to pass clear.

Whether a ship should hold herself in stays for another.

There are decisions of the American Courts to the effect that it cannot be imputed to a ship as a fault that she is sluggish in going about (*x*): and that she is not wrong in fore-reaching or shooting ahead in the wind's eye whilst going about (*y*); but if, in going about, she executes the manœuvre in an unexpected and unseamanlike fashion, she will be held in fault for a collision thereby occasioned (*z*).

Fishing boats have a right to fish on the high sea, and to be fast to their nets, whether their fishing ground is in the track of ships or not. It is the duty of other ships to take greater precautions when passing over a fishing ground, so as to keep clear of the fishing boats, and not make them cast off from their nets (*a*). Bringing up upon certain fishing grounds where drift-net fishing is being carried on is forbidden by statute (*b*).

Extra care required in passing over fishing grounds.

Vessels navigating in an unusual manner or by an improper course do so at their own risk. By the bye-laws in force in the Tyne (clause 17), all vessels proceeding to sea are required to keep on the south side of mid-channel; and (clause 20) vessels crossing the river take upon themselves the responsibility of doing so with safety to the passing

Vessels navigated in an unusual manner or course do so at their own risk.

(*t*) 1 Bened. 57. See also *The Renovator*, 30 Fed. Rep. 194.

(*u*) 4 Bened. 227. See also *The Arthur Gordon* and *The Independence*, Lush. 270; *The Lake St. Clair* and *The Underwriter*, *supra*; and cases *supra*, p. 168, note (*f*).

(*x*) *The Charlotte Raab*, Brown, Adm. 453.

(*y*) 1 Parsons on Shipping (2nd ed.), 578, note.

(*z*) *The B. C. Terry*, 30 Fed. Rep. 711.

(*a*) *The Columbus*, 2 Mar. Law Cas. O. S. Dig. 739; *Murphy* v. *Palgrave*, 21 L. T. 209 (Irish case); *The Margaret* and *The Tuscar*, 15 L. T. 86. But see *The Pacific*, 9 P. D. 124, where a steamship going eight or nine knots at night over trawling ground in the North Sea was held free from blame.

(*b*) 46 & 47 Vict. c. 22.

Article 29.

traffic. A vessel outward bound, coming out of the Tyne dock on the south side of the river, and either intentionally, or under the influence of the tide, crossing over to the north side of the river, came into collision on the north side with two steamships also going down the river. She was held in fault for the collision, as she should not have attempted to cross when there was risk of collision (*c*).

It was held in *The Smyrna* (*d*) that a usual and proper precaution for vessels to take when navigating a winding river against a strong stream is to keep under the points in the slack of the tide, so as to avoid descending vessels which are swept across the river into the opposite bight by the stream setting off the point. In the Thames, vessels are required to navigate in this manner round certain points (*e*). But, except where local enactments provide otherwise, the rule would seem to be different under the present law of "starboard side" in the narrow channels (*f*).

In New York harbour, where ferry-boats are constantly coming out from their slips or docks at right angles to the course of vessels navigating the river, the law requires vessels navigating the river to keep in mid-channel, or if they go along the shore to go very slowly (*g*).

Where two steamships were meeting in a narrow channel, one going with and the other against the tide, and it was necessary for one of them to stop, it was held by the Supreme Court in America that the vessel going against the tide should have stopped at once, as she could do so the more readily (*h*). And in *The Talabot* (*i*), it was recently laid down in the Admiralty Division that it is a prudent rule for a steamship navigating a river against the tide to wait before rounding a point until a vessel coming from the opposite direction has passed clear, and a steamer was held in fault for not observing this rule in the river Scheldt.

(*c*) *The Henry Morton*, 2 Asp. M. C. 466. As to the duty of ships to keep on their proper side and in the usual track in rivers, see *supra*, pp. 440 *seq.*; and *The Java*, 14 Wall. 189.

(*d*) 2 Moo. P. C. N. S. 435.

(*e*) See Appendix, p. 541; *The Margaret*, 9 App Cas. 873.

(*f*) See Article 25.

(*g*) *The Favorita*, 18 Wall. 598.

(*h*) *The Galatea*, 2 Otto, 439. As to the Thames, see *infra*, p. 541.

(*i*) (1891) P. 184.

Article 29.

Fleet of warships.

The duties imposed upon a fleet of warships in regard to other vessels are considered under Art. 27 (*k*).

Ships bound down the Thames against the flood.

A vessel warping down the Thames against the flood tide was held in fault for a collision thereby occasioned (*l*); and a steamship proceeding down the Thames at night against a flood tide is required to exercise the greatest caution (*m*).

Ships dropping up stern foremost.

A steamship is not justified in leaving a wharf in the Thames in a dense fog. If under way under such circumstances, it has been said that she should drop up, head upon tide, with her anchor on or near the bottom, so as to be able to bring up at once in case of emergency (*n*). The duty of a ship so navigating to warn a ship approaching her from astern was insisted upon in *The Juno* (*o*).

A keel in the Goole reach of the river Ouse was held in fault for driving through a narrow part of the fairway without her anchor on the bottom or near it (*p*).

It would probably be held to be the duty of a ship dropping through a fairway in this manner to exhibit a light over her stern, or in some other way to warn ships that she is approaching them stern foremost (*q*).

Rafts (Canada).

By 43 Vict. c. 29 (Canada), Art. 27, ships are required to keep out of the way of rafts.

Warps.

Although a vessel may run a warp across a navigable channel (*r*), she must slack it to allow other vessels to cross (*s*), and warn an approaching vessel of its presence (*t*).

Moving propeller in dock.

A steamship that damaged another by negligently moving her propeller in a New York slip was held in fault (*u*).

In crowded docks; refusal to move.

A tug attempted to pull a brig out of dock past a sloop, which had refused, on request, to move, and damaged the sloop. It was held that the tug was alone liable; but for her refusal to move, and for other reasons, the sloop was deprived of her costs (*x*).

(*k*) *Vide* p. 458, *supra*.
(*l*) *The Hope*, 2 W. Rob. 8.
(*m*) *The Trident*, 1 Sp. 217.
(*n*) *The Aguadilluna*, 6 Asp. M. C. 390.
(*o*) 7 Asp. M. C. 506.
(*p*) *The Ralph Creyke*, 6 Asp. M. C. 19.
(*q*) See *The Indian Chief*, 14 P. D. 24.
(*r*) *The Echo*, 19 Fed. Rep. 453; *The Fulda*, *infra*.
(*s*) *The Maverick*, 1 Sprague, 23.
(*t*) *The Fulda*, 31 Fed. Rep. 351.
(*u*) *The City of Mecca*, 20 Fed. Rep. 159.
(*x*) *Duane* v. *Steamtug Emma J. Kennedy*, 5 Fed. Rep. 206.

Article 29.

A steam lighter undertook to push out of the way a craft that was obstructing her dock. The way she gave the craft caused her to strike the wharf and sink. The lighter was held to be alone in fault (*y*).

Tug working at ship ashore.

A tug working at a vessel ashore in a fairway is required to make way for passing vessels (*z*).

Telegraph ships.

The enactment relating to ships engaged in laying or repairing telegraph cables, and the duty of other ships to keep clear of them, has been already referred to (*supra*, pp. 316, 344).

Eddy tide.

If a vessel enters an eddy tide, and is thereby prevented from answering her helm, and goes into collision with another ship, it is no excuse that the eddy prevented her from answering her helm (*a*), unless the action of the tide could not have been anticipated or provided against (*b*); and the effect of the tide on other ships must be known and allowed for (*c*).

Risk of smelling the ground.

In the case of a steamship navigating the Goole reach of the river Ouse, where the water was so shallow that there was risk of her smelling the ground and failing to answer her helm, it was held to be her duty, by occasionally stopping her engines, to diminish her way, and so be well under control in case of emergency: and she was held in fault for neglect of this precaution (*d*).

Being under way in thick weather; stress of weather.

If the weather is such that an object cannot be seen in time to avoid it, a vessel has no right to be under way at all. In such weather she should bring up on the first opportunity, and not get under way unless obliged to do so (*e*). In thick and bad weather generally, it is the duty of a vessel under way to exercise more than ordinary care to avoid doing damage to other ships (*f*). "Stress of weather" is an excuse

(*y*) *The Lime Rock*, 55 Fed. Rep. 126.

(*z*) *The Cherokee*, 15 Fed. Rep. 119.

(*a*) *The La Plata*, Swab. 220, 223; *The Russia*, 3 Bened. 471; *The City of Peking*, 14 App. Cas. 40; *The Fred Janson*, 49 Fed. Rep. 254; *The Sammie*, 36 Fed. Rep. 568.

(*b*) *The Rhondda*, 8 App. Cas. 549. See *The Britannia*, 46 Davis, 130.

(*c*) *The Frantz Sigel*, 14 Blatchf. 480.

(*d*) *The Ralph Creyke*, 6 Asp. M. C. 19, *supra*.

(*e*) *The Lancashire*, L. R. 4 A. & E. 198; *The Otter*, L. R. 4 A. & E. 203; *The Aguadillana*, 6 Asp. M. C. 390, *supra*. And see *supra*, pp. 378, 384.

(*f*) *The Flint*, 6 Not. of Cas. 271; *The John Harley* and *The William Tell*, 13 L. T. 413.

frequently put forward for omitting to exercise ordinary care, but it is one which the Court is very unwilling to accept (*g*). Article 29.

In squally weather it is the duty of a ship not to approach another so near that if a squall strikes her she will go in collision with the other. A vessel will be held in fault if, without necessity, she navigates so close to another that her view is obstructed, and so she cannot see a third ship in time to avoid her (*h*); or that she is affected by the wash or suction of the ship ahead, and will not answer her helm (*i*). A steamship passing another ashore so close that, when the latter set her propeller in motion to work her off, she was canted by the race from the propeller and struck a third ship, was held in fault (*k*). An overtaking ship must not approach the ship ahead so close that, upon the latter stopping (*l*) or slightly changing her course (*m*), a collision cannot be avoided; nor may she pass the other at such speed that the latter is drawn against her by the suction she sets up (*n*). Standing too close to other craft.

A brig on the starboard tack endeavouring to pass a collier driving up the Thames with the tide was caught by a heavy squall which burst her foretopsail and did other damage. The brig came up into the wind and drove against the collier. She was held solely in fault for the collision, because, having reason to expect squalls, she should have given the other vessel a wider berth (*o*).

A barge turning down the Thames on a squally night stood so close to a ship at anchor that, upon her missing stays owing to a squall, she ran into her. The barge was held solely in fault (*p*).

In America, a steamship passing so close to a sloop at anchor that the boom of the latter was driven against her by a sudden gust of wind was held solely in fault (*q*). A tug

(*g*) *The Uhla*, 19 L. T. 89; *The Flint*, *ubi supra*.

(*h*) *The Zollverein*, Swab. 96; and see *Mayhew* v. *Boyer*, 1 Stark. 423.

(*i*) *The General William McCandlass*, 6 Bened. 223, 226; *The Mariel*, 32 Fed. Rep. 103; *The City of Brockton*, 37 Fed. Rep. 897. As to the effect of suction, see *The Chicago*, 71 Fed. Rep. 537.

(*k*) *The F. & P. M.* (No. 1), 45 Fed. Rep. 703.

(*l*) *The Hackensack*, 32 Fed. Rep. 800.

(*m*) *The Laura V. Rose*, 28 Fed. Rep. 104.

(*n*) *The Ohio*, 91 Fed. Rep. 547.

(*o*) *The Globe*, 6 Not. of Cas. 275.

(*p*) *The Pluto* and *The Perseverance*, Holt, 202.

(*q*) *The George Law*, 3 Bened. 396.

Article 29.

took her tow so close to a ship at anchor that, upon her suddenly altering her course to clear the ship at anchor, the tow line parted, and the tow fouled the ship at anchor. The tug was held in fault for the collision (*r*). And where a steamship at sea sighted a schooner seven miles off, and shaped her course so as to pass within a cable's length of her, it was held by the Circuit Court that for two ships approaching each other at the rate of eighteen miles an hour such a course was "very far from an exercise of reasonable prudence" (*s*).

Where a ship, which had been ashore, came off unexpectedly and received damage in a collision with another ship which was near her, it was held that the latter was not bound to take such precautions that, at whatever time the ship ashore floated, she would not come against her (*t*).

A ship driving over a sand on which she had been ashore came into collision with another brought up just clear of the sand. It was held that the former was not in fault for the collision, and that it was the result of inevitable accident. The ship that had been ashore could not have let go her anchor whilst driving over the sand without risk to herself, and if she had let go when clear of the sand, the collision would not have been avoided (*u*).

If a ship steers a course to take her alongside another ship to speak her, or for any other purpose, she does so at her own risk (*x*). And a vessel that allows herself to swing, or takes up a berth, alongside another moored to the shore or at anchor, takes the risk of any damage she may receive in the operation (*y*). The Supreme Court of the United States held a steamship solely in fault for a collision with a pilot boat from which she was taking a pilot and which was plainly visible to her, although the pilot boat had no masthead light and crossed the bows of the steamship (*z*). The duty of a

(*r*) *The City of Philadelphia* v. *Garagnin*, 62 Fed. Rep. 617.

(*s*) *The Benefactor*, 14 Blatchf. 254.

(*t*) *The Coxon*, 2 Mar. Law Cas. O. S. Dig. 549.

(*u*) *The Thornley*, 7 Jur. 659; and see *The Buckhurst*, 6 P. D. 152.

(*x*) *The Thames*, 5 C. Rob. 345. See *The Bellerophon*, 3 Asp. M. C. 58.

(*y*) *The Chalmette*, 52 Fed. Rep. 174, where the rudder-yoke of the stationary ship holed her: *The Moonlight*, 50 Fed. Rep. 478; *The Harry*, 15 Fed. Rep. 161.

(*z*) *The City of Washington*, 2 Otto,

steamship not to have much way on when approaching her pilot boat has been insisted upon (*a*). Article 29.

In another case (*b*), before the same Court, two tugs making for the same vessel in order to get the contract to tow came into collision. It was held that the proper and usual way for tugs to come alongside was to come up on the quarter heading the same way as the vessel, and that the tug which was ahead of the vessel was in fault for not rounding to and coming up under the ship's stern.

A steam-tug unnecessarily entering a narrow cut leading to the Bute Docks, after a signal had been made by the harbour authority for sailing ships to enter, was held in fault for a collision (*c*).

The Supreme Court in America has held that a vessel undertaking to pass another in a narrow channel (*d*), or navigating such a channel in weather that makes it dangerous (*e*), does so at her own risk. Where a ship was ashore in such a place, it was held that, whether she went ashore by her own negligence or not, another vessel attempting to pass her was in fault for running into her (*f*).

Where the leading vessel of two steamers proceeding down a river with the stream, and bound to the same place on its banks, rounded-to at a proper place to land her passengers, and the following vessel, instead of stopping and rounding-to under her stern, attempted to turn ahead of her and a collision occurred, the following vessel was (in Canada) held solely in fault (*g*).

Though prudence requires a ship to avoid unnecessarily crossing the track of vessels bound upon well-known courses to and from a centre of commerce, it is not negligence for her to do so (*h*). Crossing lines of traffic.

31; and see *supra*, p. 352, for cases of collision with pilot boats.

(*a*) *The Ansgar*, 115 Fed. Rep. 440.

(*b*) *Sturgis* v. *Clough*, 21 How. 451. Cf. *Latham* v. *Hamilton*, 63 Fed. Rep. 856, where both tugs were held in fault for a collision between one of them and the schooner for which they were racing.

(*c*) *The Effort*, 5 Not. of Cas. 279.

(*d*) *The Merrimac*, 14 Wall. 199; *The Deronian*, 110 Fed. Rep. 588.

(*e*) *The Mohler*, 21 Wall. 230.

(*f*) *The Ellen S. Terry*, 7 Boned. 401.

(*g*) *The Crescent* v. *The Rowland Hall*, Stuart's Rep. (1858) (Vice-Adm. Ct., Lower Canada), 289.

(*h*) *The Iberia*, 40 Fed. Rep. 893.

Article 29.

Vessel of peculiar construction, or otherwise dangerous to others.

If a vessel is of a construction or is in a condition (*i*) which is specially dangerous to other vessels, it is her duty to warn approaching vessels of the fact. Where a ship of war carried on her stem under water a projecting ram or spur, it was said that under ordinary circumstances it would have been her duty to apprise a vessel coming alongside of the risk she ran in approaching her (*k*).

Special precautions are required of a ship in a disabled condition, of a ship hove-to and unable to keep clear of other ships, as well as of other ships approaching the disabled vessel (*l*); of a tug with a ship in tow, and of both the tug and her tow, so as not to damage each other when taking the tow-line on board, and during the performance of the towage (*m*). It is the duty of a ship unable to keep out of the way in compliance with the regulations to hail the other ship, and of the latter herself to keep out of the way (*n*).

Stowing anchors and spars in dock.

Apart from local regulations upon the subject, it is negligence in a dock or crowded waters to carry the anchor outside the rail, or not to stow and rig in spars and other hamper likely to injure other craft (*o*).

Rafts.

In America, it is held that if a ship is damaged by a raft of such a size or construction as to be a danger to other vessels being navigated with ordinary care, the owner of the tug in charge of it is liable (*p*).

Coming out of and entering dock.

Where a vessel is coming out of dock or harbour, or executing a manœuvre in the course of which an alteration of her helm is necessary, another ship approaching her is justified in acting upon the assumption that the necessary measures will be taken by the former vessel with proper skill and despatch, and that her course will be that which is obviously intended. A schooner coming out of St. George's Dock in the Mersey, the tide being flood and the wind southerly, saw a tug with a ship in tow coming down the river towards

(*i*) As a steamship with no steam: *The Bowden*, 78 Fed. Rep. 649.

(*k*) *The Bellerophon*, 3 Asp. M. C. 58; and see *The Batavier*, 1 Sp. 378.

(*l*) *The Arthur Gordon* and *The Independence*, Lush. 270; and see *supra*, pp. 8, 167.

(*m*) See *supra*, pp. 179, 188 *seq.*

(*n*) *The Lake St. Clair* and *The Underwriter*, 3 Asp. M. C. 361.

(*o*) *The Sontag*, 40 Fed. Rep. 174; *The Palmetto*, 1 Biss. 140; *The Kolon*, 9 Ben. 197; *The Industrie*, 27 Fed. Rep. 767. Cf. *supra*, pp. 13, 18.

(*p*) *The Niagara*, 44 Fed. Rep. 775; *The Athabasca*, 45 Fed. Rep. 651.

her. She put her helm hard-a-port and scandalized her main- Article 29.
sail in order to get her head to point down the river. Owing to the flood tide catching her under the starboard bow she did not answer her helm readily, and came into collision with the tug. If she had run up her outer jib, which she did not do, she would have answered her helm better, and would have kept clear of the tug. The latter had kept her course in the expectation that the schooner would set her jib and straighten herself in the river, as she was intending to do. It was held that the schooner was solely in fault for the collision, and that the tug did right in acting upon the assumption that the schooner's jib would have been run up, and that she would have straightened herself and kept on the tug's starboard side (*q*).

As a general rule a vessel entering a dock must wait until all outgoing vessels are clear (*r*).

It has been held in America to be the duty of a ship that Rounding a blind corner.
is about to round a blind corner, or navigating under high land which hides her from other craft, to give some notice of her presence to approaching vessels. So, where two ships approaching a lofty vessel from opposite sides rounded under her stern so close that neither saw the other's lights until it was too late to avoid collision, both were held to be in fault (*t*).

Dumb barges or lighters that drive with the tide have little Dumb barges.
or no control over their own movements, and cannot keep out of the way of other craft. In the absence of any rule or custom, they are not required to navigate in the shallow water of a river, so as to leave the deep channel open to vessels of greater draught, but in the Thames, where they do not carry anchors, they are justified in going on after being overtaken by a fog, until they come in contact with something to which they can make fast (*u*). It is therefore the

(*q*) *The Ulster*, 1 Mar. Law Cas. O. S. 234. Cf. *The Franconia*, 2 P. D. 8; *The Mourne*, (1901) P. 68; *The Sunlight*, (1904) P. 100; *The Servia*, 42 Davis, 144, *supra*, p. 322; *Walsh* v. *Brooklyn and New York Ferry Co.*, 68 Fed. Rep. 507; *The Hackensack*, 5 Fed. Rep. 121.

(*r*) *Taylor* v. *Burger and Another*, 8 Asp. M. C. 364 (1898).

(*s*) *The Gamma*, 103 Fed. Rep. 703; *The R. H. Waterman* and *The Transfer No. 8*, 82 Fed. Rep. 478.

(*t*) *The Albany*, 71 Fed. Rep. 311.

(*u*) *The Ralph Creyke*, 6 Asp. M. C. 19; *The Rose of England*, 6 Asp. M. C. 304.

Article 29.

duty of other vessels, and particularly of steamships, to keep out of their way. In order to do this, they must know, in each case, the set of the tide and probable course of the lighter (*x*).

Speed in narrow channels.

In a river, harbour, or narrow channel, steamships must not go at a rate of speed which will endanger passing vessels by the suction it sets up (*y*), or will raise a swell which may sink or damage barges and other craft. In the Thames, and some other rivers, there are bye-laws to this effect. Whatever the rate of speed required by local bye-laws, if a ship, though not exceeding that rate, endangers other craft, she will be held in fault (*z*). But a vessel sunk or damaged by the swell of a passing remedy cannot recover if she was mismanaged, overladen (*a*), or unfit to encounter the ordinary wash of river traffic (*b*). In the Suez Canal, five-and-a-half knots; in the Manchester Ship Canal, six miles an hour; in the Tees, six miles an hour; and within half a mile of the shore in the port of Portsmouth, seven miles an hour are the highest rates of speed allowed by the local rules. Where a rate of speed is specified by a local rule of navigation or Act of Parliament, the rate over the ground, as distinguished from the rate through the water, is *primâ facie* intended (*c*).

Special precautions required at launch.

Where a vessel is being launched, the law casts upon the persons in charge of the launch the obligation of conducting it with the utmost precaution, and of giving such notice as is reasonable and sufficient to prevent injury to passing vessels. In *The Andalusian* (*d*), although notice of the intended launch was posted up in a conspicuous place, flags were flying on the ship to be launched, and two tugs with boats were employed to warn passing vessels, a vessel that was passing

(*x*) *The Swallow*, 3 Asp. M. C. 371; *The Owen Wallis*, L. R. 4 A. & E. 175. For American decisions to the same effect, see *Fretz* v. *Bull*, 12 How. 466; *Pearce* v. *Page*, 24 How. 228; *Butterfield* v. *Boyd*, 4 Blatchf. 356.

(*y*) *Supra*, p. 493.

(*z*) *The Batavier*, 1 Sp. 378; 9 Moo. P. C. 286. See *The Duke of Cornwall*, 1 Pr. Adm. Dig. 201; *Smith* v. *Dobson*, 3 M. & G. 59; *The Columbia*, 61 Fed. Rep. 220; *The Majestic*, 48 Fed. Rep. 730; *The Monmouth* and *The Raritan*, 44 Fed. Rep. 809.

(*a*) *Luxford* v. *Large*, 5 C. & P. 421.

(*b*) *The Pilgrim*, 57 Fed. Rep. 670.

(*c*) *The R. L. Alston*, 8 P. D. 5.

(*d*) 2 P. D. 231. See also *The Vianna*, Swab. 405.

Article 29.

was not warned, and those in charge of the launch were held responsible for a collision with her.

In *The Blenheim* (*e*), Dr. Lushington said, with regard to the duty of those in charge of the launch:—"Such reasonable notice of a launch shall be given as shall prevent danger or reasonable chance of danger to other vessels navigating in the river. That is the first great principle and rule in these cases. As all other vessels have a right to navigate in a river, no person shall interfere with that navigation without such reasonable notice of a launch as may prevent the chance of an injury to them. What is reasonable notice depends on local circumstances, the breadth of the river, the number of vessels passing, and other circumstances of that kind. It must be not a mere general notice of a launch on a particular day; the notice must so specify the time of the launch that vessels navigating up and down the river may not be damaged or incur danger."

In *The Andalusian* (*f*) the duty of those in charge of a launch was thus stated: "The law throws upon those who launch a vessel the obligation of doing so with the utmost precaution, and giving such notice as is reasonable and sufficient to prevent any injury happening from the launch; and, moreover, the burden of showing that every reasonable precaution has been taken, and every reasonable notice given, lies upon her and those navigating the launch." This statement of the law was cited and acted upon by Butt, J., in *The George Roper* (*g*). In the same case the learned judge pointed out that, "when you set a vessel of large size, without engines and without a helm, and with only a tug to manage her, off the ways at a speed of seven knots across the fairway of the river Mersey, the utmost precautions are only reasonable." He held that the people in charge of the launch were in fault for not taking every possible step to assure themselves that no vessel was approaching the ways before the launch was started. He also expressed his opinion that in the Mersey the tug or tugs attending a launch should be decorated with flags in the usual way when a launch is about to take place (*h*).

(*e*) 4 Not. of Cas. 393.
(*f*) 2 P. D. 231.
(*g*) 8 P. D. 119. Similar language was used by Sir R. Phillimore in *The Glengarry*, 2 P. D. 235.
(*h*) See also *The Glengarry*, 2 P. D.

Article 29.

In *The Cachapool* (*i*), it was held that a vessel at anchor in the way of a launch was in fault for a collision with the launch. Notice had been given her at six o'clock of the intended launch, which took place at half-past ten; and shortly before that hour a tug had been sent by those in charge of the launch to endeavour to get the ship at anchor to allow the tug to tow her out of the way.

In *The Glengarry* (*k*), it was held that all proper precautions were taken, and that the vessel under way (a tug with barges in tow) was solely in fault for steaming across the path of *The Glengarry* at the moment she was being started.

Even after proper notice of a launch has been given, it must not take place so long as other vessels are in the way. If it is customary for the harbour-master to superintend or be present, it should not take place in his absence (*l*).

Small craft not required by law to keep out of the way of heavy ships.

There is no rule in law requiring small vessels to keep out of the way of larger ones, though it may be much easier for them to do so than for the larger ship to take the steps required by the regulations. A large ship going at a slow speed in a narrow channel cannot alter her course rapidly, and may be unable to do all that is necessary to avoid collision. But, so far as she can do so, she must comply with the regulations; and in such a case it will be the duty of the smaller vessel to take such precautions as are rendered necessary by the comparatively helpless condition of the larger ship (*m*).

The paramount duty of both craft to do what is necessary to avoid collision is brought out more distinctly by the American than by the English cases. A small sailing boat, in a flat calm, was struck by a steamship with a heavy barge lashed alongside. The sailing boat was held in fault (as well as the steamship), because she did not use her oars to get out of the way of the steamship (*n*); and a schooner of 130 tons, becalmed in a difficult position in a river, was held in fault for not using her sweeps, or having a boat to tow

235, on this point; *Malster* v. *Humphreys*, 3 Fed. Rep. 535.

(*i*) 7 P. D. 217. As to these cases, see *The Westernland*, *supra*, p. 22.

(*k*) 2 P. D. 235.

(*l*) *The United States*, 12 L. T. 33.

(*m*) See *The La Plata*, Swab. 220; on app., *ibid.* 298; *The Arthur Gordon* and *The Independence*, Lush. 270.

(*n*) *The Bay Queen*, 42 Fed. Rep. 271.

ahead, so as to avoid a steamship that struck her (*o*). In New York harbour, where large steamships cannot take up their berths in their slips without swinging against the ends of the piers, it is held to be the duty of small craft moored at the piers to shift, so as not to be crushed by the big ships (*p*). Article 29.

Reservation of Rules for Harbours and Inland Navigation.

ARTICLE 30.

Nothing in these rules shall interfere with the operation of a special rule duly made by local authority, relative to the navigation of any harbour, river, or inland waters. Article 30. Local rules not affected by the general rules.

This Article is identical with Art. 25 of the Regulations of 1884. It must be read together with the preliminary paragraph (*supra*, p. 332), which directs that the regulations shall be followed "upon the high seas, and in all waters connected therewith navigable by seagoing vessels." The effect of local rules in all waters within the King's dominions to which the Merchant Shipping Act, 1894, applies, is saved by 57 & 58 Vict. c. 60, s. 421.

Local rules have not, in all cases, been recognised by the Courts as of equally binding effect with the sea regulations; but there is no doubt that an infringement of a local rule made by a competent authority and applicable to the case will, unless excused by special circumstances, be held to be negligence contributing to a collision (*q*). A bye-law made under a local Act required ships coming into the Tyne to keep on the north side of the river. *The Raithwaite Hall*, coming in from the sea in a thick fog, was in collision, on the south side of the river, with a vessel bound out. In the absence of proof of negligence on the part of the latter, *The Raithwaite Hall* was held to be in fault for the collision (*r*). In this case Sir R. Phillimore said, with regard to the effect

(*o*) *The B. K. Washburn*, 19 Fed. Rep. 788.
(*p*) *The Etruria*, 88 Fed. Rep. 555.
(*q*) See *Cayzer* v. *Carron Co.*, *The Margaret*, 9 App. Cas. 873; *The Vourri* and *The Spearman*, 10 App. Cas. 276.
(*r*) *The Raithwaite Hall*, 2 Asp. M. C. 210.

Article 30.

of local rules: "There should, however, be no misunderstanding as to the effect of these and similar bye-laws governing the navigation of a river. It cannot be held that, because they or any of them are disobeyed, the vessel disobeying them is therefore to be held to blame. They are only evidence of what it is the duty of a vessel to do under the circumstances named in the particular bye-law. As such evidence, however, they are an important element in every case that comes within their provisions; and if it should appear that by the breach of one of them a ship has occasioned or contributed to a collision, the existence of such a bye-law would afford the very strongest reason for holding that a ship had been guilty of a breach of duty and was to blame for the collision" (*s*).

Effect of infringement.

An infringement of some, but not of all, local rules will cause the ship to be held in fault under 57 & 58 Vict. c. 60, s. 419 (*t*).

There are local rules in force at and in the following places and waters: Arundel, Avon, Belfast, Berehaven, Blyth, Boston, Bristol, Caledonian Canal, Carron River, Chatham, Clyde, Cork, Cowes, Dartmouth, Deptford, Dublin, Falmouth, Galway, Gloucester and Berkeley Canal, Holyhead, Humber, Ipswich, Limerick, Londonderry, Manchester Ship Canal (*u*), Medway, Mersey, Mersey and Irwell Navigation, Milford, Newport (Mon.), Newry, Orwell, Ouse (Upper and Lower), Pembroke, Plymouth, Portland, Portsmouth, Queenstown, Runcorn and Weston Canal, Ryde, Solent, Southampton, Suir, Tees, Thames, Tyne, Warkworth, Waterford, Weaver Navigation, Whitby, Windermere, Woolwich, Youghal. Some of these rules are full and almost identical with the sea regulations; others are scanty and antiquated. Some deal with ships' lights, speed,

(*s*) As to the obligation to obey local rules, the recognition of them by an Admiralty Court, and proof of them, see *The Henry Morton*, 2 Asp. M. C. 466; *The Peerless*, 13 Moo. P. C. 484; *The Smyrna*, 2 Moo. P. C. N. S. 435. As to the effect of a breach of a local statutory rule or duty, see *The United Service*, 8 P. D. 56; *Atkinson* v. *Newcastle and Gateshead Waterworks Co.*, 2 Ex. D. 441. Ignorance of a local rule is no excuse for disobeying it: *The River Derwent*, 6 Asp. M. C. 467.

(*t*) See *supra*, pp. 55 *seq.*

(*u*) These rules have not, however, been confirmed by the Board of Trade as required by sect. 198 of the Manchester Ship Canal Act, 1898.

Article 30.

anchorage ground, docking; others with local matters foreign to the subject of this work.

These rules derive their force either from local Acts, or from the Merchant Shipping Act, 1894, s. 421 (2), which gives His Majesty power to make rules where they cannot be made otherwise; or from 10 & 11 Vict. c. 27, giving dock and harbour authorities similar power; or from 28 & 29 Vict. c. 125, relating to dockyard ports (*x*).

There are local rules in force in some foreign rivers and waters, such as the Bosphorus, the Danube, the Suez Canal, the inland waters and lakes of the United States and Canada, and probably many other foreign waters (*y*). Whether the words of Art. 30 as to "rules made by local authority" apply to foreign as well as to British rules, has not been decided.

The "Inland Waters" rules of America contain many additions to and alterations of the general collision regulations (*z*). They are applicable in Boston, New York, Baltimore, Galveston, San Francisco, and other harbours and waters of the seaboard of the United States, the limits of which are set out in the *London Gazette*, 9th July, 1895.

Local rules and sea regulations applying in same waters.

Difficulties arise in some cases where the local rules are not consistent with the general regulations; but it appears that in the waters in which they are in force the local rules must be obeyed without regard to the general regulations, if the latter conflict with them. At a time when there was no bye-law in force in the Thames requiring sailing ships to carry lights, a Trinity sailing ballast-lighter was run down in the river when carrying no lights. It was held that, not being a sea-going vessel, she was not required by the sea regulations to carry lights, and that she was not required to carry them under the local rules, there being no rule on the

(*x*) The dockyard ports for which rules have been made are Berehaven, Chatham, Deptford, Pembroke, Plymouth, Portland, Portsmouth, Queenstown, Sheerness, and Woolwich. See Orders in Council of 29th Feb. 1868; 29th June, 1878; 19th May, 1885; 29th June, 1888; 15th Aug. 1890; 22nd Nov. 1890; 17th Sept. 1900 (Portsmouth); 26th Sept. 1901 (Berehaven); 5th Dec. 1902 (Portland). There are also rules for Gibraltar: Ord. in Council, 7th March, 1898; London Gazette, 13th Jan. 1899.

(*y*) *The Smyrna*, 2 Moo. P. C. N. S. 447; *The Clieveden*, (1894) App. Cas. 625, are decisions upon Danube rules. The Sea Rules apply to the Elbe.

(*z*) These, together with the American rules for the Great Lakes and Western rivers, are set out in "The Rules of the Road at Sea," above mentioned.

Article 30.

subject (*a*). Sir R. Phillimore expressed an opinion that the power of the Thames Conservators did not enable them to make bye-laws for sea-going ships, and their powers applied to river craft only. It seems, however, that the existing Thames bye-laws are binding on all ships in the Thames. It appears that where the local rules do not conflict with the general rules, the latter are supplementary to the local rules (*b*); several recent cases (*c*) show the difficulties, both of construction and locality, which arise where the sea regulations are applied in conjunction with local rules. For example, in the estuary of the Thames it is extremely difficult to draw the line at which the sea regulations begin, and the Thames rules cease, to operate. As the former contain a "starboard side" rule, and the latter do not, the matter is one which ought not to be left to the Courts to decide (*d*).

Customary course.

Local rules, though not made by any competent authority, may, by long usage and well-recognised practice, establish a custom, the infringement of which will be negligence. The obligation to obey such a custom of the river was upheld by the Privy Council in *The Fyenoord*. That case was decided under sect. 297 of 17 & 18 Vict. c. 104, by which it was enacted, in effect, that vessels going up the Thames should keep on the north or starboard side. *The Fyenoord*, a foreign ship, was navigating on the south side, and came into collision with a vessel bound down. It was held that, even if the statute was not binding on foreign ships, a custom had emanated from the statute that ships should navigate in accordance with it, and that *The Fyenoord* was to blame for transgressing the custom (*e*).

(*a*) *The C. S. Butler*, L. R. 4 A. & E. 238.

(*b*) *Supra*, p. 318.

(*c*) *E.g.*, *The Harvest*, 11 P. D. 90; *The Minnie*, (1894) P. 336; *The Winstanley*, (1896) P. 297; *The Carlotta*, (1899) P. 223.

(*d*) In America the Secretary to the Treasury has power to define by bearings "the line dividing the high seas from rivers, harbours, and inland waters": Act of Congress, 19th Feb. 1895, c. 102; 28 Stat. 672, s. 2.

(*e*) *The Fyenoord*, Swab. 374. See also, as to local custom, *The Smyrna*, 2 Moo. P. C. N. S. 447; *Kennedy* v. *The Sarmatian*, 2 Fed. Rep. 911.

Distress Signals.

ARTICLE 31.

Article 31. Distress signals.

When a vessel is in distress, and requires assistance from other vessels, or from the shore, the following shall be the signals to be used or displayed by her, either together or separately, viz.:—

In the daytime—

1. *A gun or other explosive signal fired at intervals of about a minute;*
2. *The International Code signal of distress indicated by N. C.;*
3. *The distant signal, consisting of a square flag, having either above or below it a ball, or anything resembling a ball;*
4. *A continuous sounding with any fog-signal apparatus.*

At night—

1. *A gun fired at intervals of about a minute;*
2. *Flames on the ship (as from a burning tar barrel, oil barrel, &c.);*
3. *Rockets or shells, throwing stars of any colour or description, fired one at a time, at short intervals;*
4. *A continuous sounding with any fog-signal apparatus.*

This Article corresponds with Art. 27 of the Regulations of 1884. The "continuous sounding with any fog-signal apparatus" is new. These distress signals are made under a different section (sect. 434) of the Merchant Shipping Act, 1894, to that (sect. 418) under which the collision regulations are made (*f*).

(*f*) They were inserted in the Collision Regulations of 1880 and 1884, apparently by mistake.

APPENDIX I

THE REGULATIONS FOR PREVENTING COLLISIONS AT SEA (*a*).

Preliminary.

These rules shall be followed by all vessels upon the high seas and in all waters connected therewith, navigable by sea-going vessels.

In the following rules every steam vessel which is under sail and not under steam is to be considered a sailing vessel, and every vessel under steam, whether under sail or not, is to be considered a steam vessel.

The word "steam vessel" shall include any vessel propelled by machinery.

A vessel is "under way" within the meaning of these rules when she is not at anchor, or made fast to the shore or aground.

Rules concerning Lights, &c.

The word "visible" in these rules, when applied to lights, shall mean visible on a dark night with a clear atmosphere.

Art. 1. The rules concerning lights shall be complied with in all weathers from sunset to sunrise, and during such time no other lights which may be mistaken for the prescribed lights shall be exhibited.

Art. 2. A steam vessel when under way shall carry—

(a) On or in front of the foremast, or if a vessel without a foremast, then in the fore part of the vessel, at a height above the hull of not less than twenty feet, and if the breadth of the vessel exceeds twenty feet, then at a height above the hull not less than such breadth, so, however, that the light need not be carried at a greater height above the hull than forty feet, a bright white light, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed

(*a*) Made by Order in Council of 27th Nov. 1896.

as to throw the light ten points on each side of the vessel, viz., from right ahead to two points abaft the beam on either side, and of such a character as to be visible at a distance of at least five miles.

(b) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least two miles.

(c) On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible at a distance of at least two miles.

(d) The said green and red side lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

(e) A steam vessel when under way may carry an additional white light similar in construction to the light mentioned in sub-division (a). These two lights shall be so placed in line with the keel that one shall be at least fifteen feet higher than the other, and in such a position with reference to each other that the lower light shall be forward of the upper one. The vertical distance between these lights shall be less than the horizontal distance.

Art. 3. A steam vessel when towing another vessel shall, in addition to her side lights, carry two bright white lights in a vertical line one over the other, not less than six feet apart, and when towing more than one vessel shall carry an additional bright white light six feet above or below such lights, if the length of the tow, measuring from the stern of the towing vessel to the stern of the last vessel towed, exceeds 600 feet. Each of these lights shall be of the same construction and character, and shall be carried in the same position as the white light mentioned in Art. 2 (a), except the additional light, which may be carried at a height of not less than fourteen feet above the hull.

Such steam vessel may carry a small white light abaft the funnel or aftermast for the vessel towed to steer by, but such light shall not be visible forward of the beam.

Art. 4.—(a) A vessel which from any accident is not under command, shall carry at the same height as the white light mentioned in Art. 2 (a), where they can best be seen, and, if a steam vessel, in lieu of that light, two red lights, in a vertical line one over the other, not less than six feet apart, and of such a character as to be visible all round the horizon at a distance of at least two miles; and shall by day carry in a vertical line one over the other, not less than six feet apart, where they can

best be seen, two black balls or shapes, each two feet in diameter.

(b) A vessel employed in laying or in picking up a telegraph cable shall carry in the same position as the white light mentioned in Art. 2 (a), and, if a steam vessel, in lieu of that light, three lights in a vertical line one over the other, not less than six feet apart. The highest and lowest of these lights shall be red, and the middle light shall be white, and they shall be of such a character as to be visible all round the horizon, at a distance of at least two miles. By day she shall carry in a vertical line one over the other, not less than six feet apart, where they can best be seen, three shapes not less than two feet in diameter, of which the highest and lowest shall be globular in shape and red in colour, and the middle one diamond in shape and white.

(c) The vessels referred to in this Article, when not making way through the water, shall not carry the side lights, but when making way shall carry them.

(d) The lights and shapes required to be shown by this Article are to be taken by other vessels as signals that the vessel showing them is not under command and cannot, therefore, get out of the way.

These signals are not signals of vessels in distress and requiring assistance. Such signals are contained in Art. 31.

Art. 5. A sailing vessel under way, and any vessel being towed, shall carry the same lights as are prescribed by Art. 2 for a steam vessel under way, with the exception of the white lights mentioned therein, which they shall never carry.

Art. 6. Whenever, as in the case of small vessels under way during bad weather, the green and red side lights cannot be fixed, these lights shall be kept at hand lighted and ready for use; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side, nor, if practicable, more than two points abaft the beam on their respective sides.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with proper screens.

Art. 7. Steam vessels of less than forty, and vessels under oars or sails of less than twenty, tons gross tonnage, respectively, and rowing boats, when under way, shall not be obliged to carry the lights mentioned in Art. 2 (a), (b) and (c), but if they do not carry them they shall be provided with the following lights:—

1. Steam vessels of less than forty tons shall carry:

(a) In the fore part of the vessel, or on or in front of the funnel, where it can best be seen, and at a height above the gunwale of not less than nine feet, a bright white light constructed and fixed as pre-

scribed in Art. 2 (a), and of such a character as to be visible at a distance of at least two miles.

(b) Green and red side lights constructed and fixed as prescribed in Art. 2 (b) and (c), and of such a character as to be visible at a distance of at least one mile, or a combined lantern showing a green light and a red light from right ahead to two points abaft the beam on their respective sides. Such lantern shall be carried not less than three feet below the white light.

2. Small steamboats, such as are carried by sea-going vessels, may carry the white light at a less height than nine feet above the gunwale, but it shall be carried above the combined lantern, mentioned in sub-division 1 (b).

3. Vessels under oars or sails, of less than twenty tons, shall have ready at hand a lantern with a green glass on one side and a red glass on the other, which, on the approach of or to other vessels, shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.

4. Rowing boats, whether under oars or sail, shall have ready at hand a lantern showing a white light, which shall be temporarily exhibited in sufficient time to prevent collision.

The vessels referred to in this Article shall not be obliged to carry the lights prescribed by Art. 4 (a), and Art. 11, last paragraph.

Art. 8. Pilot vessels, when engaged on their station on pilotage duty, shall not show the lights required for other vessels, but shall carry a white light at the masthead, visible all round the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes.

On the near approach of or to other vessels they shall have their side lights lighted, ready for use, and shall flash or show them at short intervals, to indicate the direction in which they are heading, but the green light shall not be shown on the port side, nor the red light on the starboard side.

A pilot vessel of such a class as to be obliged to go alongside of a vessel to put a pilot on board, may show the white light instead of carrying it at the masthead, and may, instead of the coloured lights above mentioned, have at hand ready for use a lantern with a green glass on the one side and a red glass on the other, to be used as prescribed above.

Pilot vessels, when not engaged on their station on pilotage duty, shall carry lights similar to those of other vessels of their tonnage.

[A steam pilot vessel exclusively employed for the service of pilots licensed or certified by any pilotage authority or the committee of any pilotage district in the United Kingdom when

engaged on her station on pilotage duty and in British waters and not at anchor shall in addition to the lights required for all pilot boats carry at a distance of eight feet below her white masthead light a red light visible all round the horizon and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles, and also the coloured side lights required to be carried by vessels when under way.

When engaged on her station on pilotage duty, and in British waters, and at anchor, she shall carry in addition to the lights required for all pilot boats the red light above mentioned, but not the coloured side lights.

When not engaged on her station on pilotage duty she shall carry the same lights as other steam vessels]. (Added to Art. 8 by Order in Council, July 7th, 1897.)

Art. 9. Fishing-vessels and fishing-boats, when under way and when not required by this Article to carry or show the lights herein-after specified shall carry or show the lights prescribed for vessels of their tonnage under way.

(a) Open boats, by which is to be understood boats not protected from the entry of sea water by means of a continuous deck, when engaged in any fishing at night with outlying tackle extending not more than 150 feet horizontally from the boat into the seaway, shall carry one all-round white light.

Open boats, when fishing at night, with outlying tackle extending more than 150 feet horizontally from the boat into the seaway, shall carry one all-round white light, and in addition, on approaching or being approached by other vessels, shall show a second white light at least 3 feet below the first light and at a horizontal distance of at least 5 feet away from it in the direction in which the outlying tackle is attached.

(b) Vessels and boats, except open boats as defined in subdivision (a), when fishing with drift nets, shall, so long as the nets are wholly or partly in the water, carry two white lights where they can best be seen. Such lights shall be placed so that the vertical distance between them shall be not less than 6 feet and not more than 15 feet, and so that the horizontal distance between them, measured in a line with the keel, shall be not less than 5 feet and not more than 10 feet. The lower of these two lights shall be in the direction of the nets, and both of them shall be of such a character as to show all round the horizon, and to be visible at a distance of not less than 3 miles.

Within the Mediterranean Sea and in the seas bordering the coasts of Japan and Korea sailing fishing vessels of less than 20 tons gross tonnage shall not be obliged to carry the lower of these two lights; should they, however, not carry it, they shall show in the same position (in the direction of the net or

gear) a white light, visible at a distance of not less than one sea mile, on the approach of or to other vessels.

(c) Vessels and boats, except open boats as defined in sub-division (a), when line-fishing with their lines out and attached to or hauling their lines, and when not at anchor or stationary within the meaning of sub-division (h), shall carry the same lights as vessels fishing with drift-nets. When shooting lines, or fishing with towing lines, they shall carry the lights prescribed for a steam or sailing vessel under way respectively.

Within the Mediterranean Sea and in the seas bordering the coasts of Japan and Korea sailing fishing vessels of less than 20 tons gross tonnage shall not be obliged to carry the lower of these two lights; should they, however, not carry it, they shall show in the same position (in the direction of the lines) a white light, visible at a distance of not less than one sea mile on the approach of or to other vessels.

(d) Vessels, when engaged in trawling, by which is meant the dragging of an apparatus along the bottom of the sea—

1. If steam-vessels, shall carry in the same position as the white light mentioned in Article 2 (a), a tricoloured lantern so constructed and fixed as to show a white light from right ahead to two points on each bow, and a green light and a red light over an arc of the horizon from two points on each bow to two points abaft the beam on the starboard and port sides respectively; and not less than 6 nor more than 12 feet below the tricoloured lantern a white light in a lantern, so constructed as to show a clear uniform and unbroken light all round the horizon.

2. If sailing-vessels, shall carry a white light in a lantern, so constructed as to show a clear uniform and unbroken light all round the horizon, and shall also, on the approach of or to other vessels, show where it can best be seen a white flare-up light or torch in sufficient time to prevent collision.

All lights mentioned in sub-division (d) 1 and 2 shall be visible at a distance of at least 2 miles.

(e) Oyster dredgers and other vessels fishing with dredge nets shall carry and show the same lights as trawlers.

(f) Fishing-vessels and fishing-boats may at any time use a flare-up light in addition to the lights which they are by this Article required to carry and show, and they may also use working lights.

(g) Every fishing-vessel and every fishing-boat under 150 feet in length, when at anchor, shall exhibit a white light visible all round the horizon at a distance of at least one mile.

Every fishing-vessel of 150 feet in length or upwards, when at anchor, shall exhibit a white light visible all round the horizon at a distance of at least one mile, and shall exhibit a second light as provided for vessels of such length by Article 11.

Should any such vessel, whether under 150 feet in length, or of 150 feet in length or upwards, be attached to a net or other fishing gear, she shall on the approach of other vessels show an additional white light at least 3 feet below the anchor light, and at a horizontal distance of at least 5 feet away from it in the direction of the net or gear.

(h) If a vessel or boat when fishing becomes stationary in consequence of her gear getting fast to a rock or other obstruction, she shall in daytime haul down the day-signal required by sub-division (k); at night show the light or lights prescribed for a vessel at anchor; and during fog, mist, falling snow, or heavy rain-storms make the signal prescribed for a vessel at anchor. (See sub-division d, and the last paragraph, of Article 15.)

(i) In fog, mist, falling snow, or heavy rain-storms, drift-net vessels attached to their nets, and vessels when trawling, dredging, or fishing with any kind of drag-net, and vessels line fishing with their lines out, shall, if of 20 tons gross tonnage or upwards, respectively, at intervals of not more than one minute make a blast; if steam-vessels, with the whistle or syren, and if sailing-vessels with the fog-horn; each blast to be followed by ringing the bell. Fishing vessels and boats of less than 20 tons gross tonnage shall not be obliged to give the above-mentioned signals; but if they do not, they shall make some other efficient sound signal at intervals of not more than one minute.

(k) All vessels or boats fishing with nets or lines or trawls, when under way, shall in daytime indicate their occupation to an approaching vessel by displaying a basket or other efficient signal where it can best be seen. If vessels or boats at anchor have their gear out, they shall, on the approach of other vessels, show the same signal on the side on which those vessels can pass.

Art. 10. A vessel which is being overtaken by another shall show from her stern to such last-mentioned vessel a white light or a flare-up light.

The white light required to be shown by this Article may be fixed and carried in a lantern, but in such case the lantern shall be so constructed, fitted, and screened that it shall throw an unbroken light over an arc of the horizon of twelve points of the compass, viz., for six points from right aft on each side of the vessel, so as to be visible at a distance of at least one mile.

Such light shall be carried as nearly as practicable on the same level as the side lights.

Art. 11. A vessel under 150 feet in length, when at anchor, shall carry forward, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a lantern so constructed as to show a clear, uniform, and unbroken light visible all round the horizon at a distance of at least one mile.

A vessel of 150 feet or upwards in length, when at anchor, shall carry in the forward part of the vessel, at a height of not less than twenty, and not exceeding forty, feet above the hull, one such light, and at or near the stern of the vessel, and at such a height that it shall be not less than fifteen feet lower than the forward light, another such light.

The length of a vessel shall be deemed to be the length appearing in her certificate of registry.

A vessel aground in or near a fairway shall carry the above light or lights and the two red lights prescribed by Art. 4 (a).

Art. 12. Every vessel may, if necessary in order to attract attention, in addition to the lights which she is by these rules required to carry, show a flare-up light or use any detonating signal that cannot be mistaken for a distress signal.

Art. 13. Nothing in these rules shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for two or more ships of war or for vessels sailing under convoy, or with the exhibition of recognition signals adopted by shipowners, which have been authorized by their respective Governments and duly registered and published.

Art. 14. A steam vessel proceeding under sail only, but having her funnel up, shall carry in daytime, forward, where it can best be seen, one black ball or shape two feet in diameter.

Sound Signals for Fog, &c.

Art. 15. All signals prescribed by this Article for vessels under way shall be given:

1. By "steam vessels" on the whistle or siren.
2. By "sailing vessels and vessels towed" on the fog-horn.

The words "prolonged blast" used in this Article shall mean a blast of from four to six seconds' duration.

A steam vessel shall be provided with an efficient whistle or siren, sounded by steam or some substitute for steam, so placed that the sound may not be intercepted by any obstruction, and with an efficient fog-horn, to be sounded by mechanical means, and also with an efficient bell.* A sailing vessel of twenty tons gross tonnage or upwards shall be provided with a similar fog-horn and bell.

In fog, mist, falling snow, or heavy rain storms, whether by

* In all cases where the rules require a bell to be used a drum may be substituted on board Turkish vessels, or a gong where such articles are used on board small sea-going vessels.

day or night, the signals described in this Article shall be used as follows; viz.:—

(a) A steam vessel having way upon her shall sound, at intervals of not more than two minutes, a prolonged blast.

(b) A steam vessel under way, but stopped and having no way upon her, shall sound, at intervals of not more than two minutes, two prolonged blasts, with an interval of about one second between them.

(c) A sailing vessel under way shall sound, at intervals of not more than one minute, when on the starboard tack one blast, when on the port tack two blasts in succession, and when with the wind abaft the beam three blasts in succession.

(d) A vessel, when at anchor, shall, at intervals of not more than one minute, ring the bell rapidly for about five seconds.

(e) A vessel, when towing, a vessel employed in laying or in picking up a telegraph cable, and a vessel under way, which is unable to get out of the way of an approaching vessel through being not under command, or unable to manœuvre as required by these rules, shall, instead of the signals prescribed in sub-divisions (a) and (c) of this Article, at intervals of not more than two minutes, sound three blasts in succession, viz., one prolonged blast followed by two short blasts. A vessel towed may give this signal and she shall not give any other.

Sailing vessels and boats of less than twenty tons gross tonnage shall not be obliged to give the above-mentioned signals, but if they do not, they shall make some other efficient sound signal at intervals of not more than one minute.

Speed of Ships to be Moderate in Fog, &c.

Art. 16. Every vessel shall, in a fog, mist, falling snow, or heavy rain storms, go at a moderate speed, having careful regard to the existing circumstances and conditions.

A steam vessel hearing, apparently forward of her beam, the fog-signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over.

Steering and Sailing Rules.

Preliminary—Risk of Collision.

Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist.

Art. 17. When two sailing vessels are approaching one

another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, viz.:—

(a) A vessel which is running free shall keep out of the way of a vessel which is close-hauled.

(b) A vessel which is close-hauled on the port tack shall keep out of the way of a vessel which is close-hauled on the starboard tack.

(c) When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.

(d) When both are running free, with the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward.

(e) A vessel which has the wind aft shall keep out of the way of the other vessel.

Art. 18. When two steam vessels are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

This Article only applies to cases where vessels are meeting end on, or nearly end on, in such a manner as to involve risk of collision, and does not apply to two vessels which must, if both keep on their respective courses, pass clear of each other.

The only cases to which it does apply are, when each of the two vessels is end on, or nearly end on, to the other; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own; and by night, to cases in which each vessel is in such a position as to see both the side lights of the other.

It does not apply, by day, to cases in which a vessel sees another ahead crossing her own course; or by night, to cases where the red light of one vessel is opposed to the red light of the other, or where the green light of one vessel is opposed to the green light of the other, or where a red light without a green light, or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead.

Art. 19. When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other.

Art. 20. When a steam vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, the steam vessel shall keep out of the way of the sailing vessel.

Art. 21. Where by any of these rules one of two vessels is to keep out of the way, the other shall keep her course and speed.

Note.—When, in consequence of thick weather or other causes, such vessel finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avert collision. (See Arts. 27 and 29.)

Art. 22. Every vessel which is directed by these rules to keep

out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other.

Art. 23. Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse.

Art. 24. Notwithstanding anything contained in these rules, every vessel, overtaking any other, shall keep out of the way of the overtaken vessel.

Every vessel coming up with another vessel from any direction more than two points abaft her beam, *i.e.*, in such a position, with reference to the vessel which she is overtaking, that at night she would be unable to see either of that vessel's side lights, shall be deemed to be an overtaking vessel; and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these rules, or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

As by day the overtaking vessel cannot always know with certainty whether she is forward of or abaft this direction from the other vessel, she should, if in doubt, assume that she is an overtaking vessel and keep out of the way.

Art. 25. In narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel.

Art. 26. Sailing vessels under way shall keep out of the way of sailing vessels or boats fishing with nets, or lines, or trawls. This rule shall not give to any vessel or boat engaged in fishing the right of obstructing a fairway used by vessels other than fishing vessels or boats.

Art. 27. In obeying and construing these rules, due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

Sound Signals for Vessels in Sight of one Another.

Art. 28. The words "short blast" used in this Article shall mean a blast of about one second's duration.

When vessels are in sight of one another, a steam vessel under way, in taking any course authorized or required by these rules, shall indicate that course by the following signals on her whistle or siren, viz.:—

One short blast to mean, "I am directing my course to starboard."

Two short blasts to mean, "I am directing my course to port."

Three short blasts to mean, "My engines are going full speed astern."

No Vessel under any Circumstances to neglect proper Precautions.

Art. 29. Nothing in these rules shall exonerate any vessel, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

Reservation of Rules for Harbours and Inland Navigation.

Art. 30. Nothing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbour, river, or inland waters.

Distress Signals.

Art. 31. When a vessel is in distress and requires assistance from other vessels or from the shore, the following shall be the signals to be used or displayed by her, either together or separately; viz.:—

In the daytime—

1. A gun or other explosive signal fired at intervals of about a minute;
2. The International Code signal of distress indicated by N. C.;
3. The distant signal, consisting of a square flag, having either above or below it a ball or anything resembling a ball;
4. A continuous sounding with any fog-signal apparatus.

At night—

1. A gun or other explosive signal fired at intervals of about a minute;
2. Flames on the vessel (as from a burning tar-barrel, oil-barrel, &c.);
3. Rockets or shells, throwing stars of any colour or description, fired one at a time, at short intervals;
4. A continuous sounding with any fog-signal apparatus.

APPENDIX II.

LOCAL RULES OF NAVIGATION (*a*).

THE CLYDE.

Bye-laws of 6th August, 1889 (*b*), made under 21 & 22 Vict. c. 149 The Clyde. (Local), and 50 Vict. sess. 2, c. 8 (Local).

1. (*Vessels over sixty tons to have pilot.*)
2. (*In daytime one hand, at night and in fog two hands, on the look-out.*)
3. (*Steam vessel or dredger turning or unable to keep out of the way to sound four or more blasts or strokes of her bell; thereupon the other vessel to keep out of the way.*)
4. (*Yards to be peaked; bowsprits and jibbooms run in or topped.*)
5. (*Anchors to be laid so as not to interfere with fairway. Bowsprits and jibbooms of vessels aground to be rigged in.*)
6. (*Vessels not to anchor or moor above Bowling, or inside the river walls.*)
7. (*Small boats prohibited in certain parts of the river.*)
8. (*Scows to have coamings eighteen inches high.*)

* * * * *

11. (*At night and in dense fog speed not to exceed four miles an hour.*)

* * * * *

14. When steam vessels proceeding in opposite directions are approaching one another, each shall, when within fifty yards of the other, slow her engines, and each shall alter her course to starboard, so that each shall pass to the port side of the other.

15. When two steam vessels are proceeding in the same direction, but with unequal speed, the slower vessel shall, when about to be overtaken, be kept sufficiently to the left or port side of the channel as to leave a free passage for the faster vessel, and shall be slowed, and, if necessary, the engines stopped, as soon as the faster vessel comes within fifty yards of her; and the engines of the faster vessel shall also be slowed, when within fifty yards of the slower vessel, until the latter shall be passed; and it shall be sufficient intimation to the slower vessel of the faster vessel's purpose of passing her that the bell of the faster vessel be twice rung and her engine

(*a*) For a list of waters for which there are local rules, see above, p. 502. Those which are not contained in this Appendix will be found set out in "The Rules of the Road at Sea," by Mr. H. Stuart Moore.

(*b*) It is understood that a revision of these bye-laws is in progress.

Local rules (The Clyde).

whistle be twice sounded; but the faster vessel shall not attempt to pass the slower until the latter shall have given her room to pass safely. Failing that being done, the person in charge of the faster vessel shall report the offence to the pilot board in order that such offence may be dealt with.

Note.—The faster vessel should not claim to pass the slower at a narrow or otherwise difficult part of the river, and only when the course is free of other passing vessels.

16. A steam vessel meeting or overtaking any sailing vessel, or tug with sailing vessel or timber raft in tow, shall slow her engines within fifty yards of such vessels, and shall continue slowing until she shall have passed the same; and when about to pass any vessel aground or at anchor shall slow her engines at least 150 yards from such vessel, and so continue until she shall have passed the same.

17. Every vessel when being overtaken by another vessel after dark shall show from her stern a white light until the other vessel shall have passed.

18. Vessels coming out of dock shall signify the same by a prolonged blast of the steam whistle of not less than five seconds' duration, and in cases where a vessel is not under steam the tug boat in attendance shall make the same signal.

19. Every steam vessel under her own steam, crossing from one side of the river towards the other side, shall keep out of the way of vessels navigating up and down the river.

20. (*Steamships to go dead slow past dredging machines, diving bells, and river works.*)

21. (*Steamships to go dead* (*c*) *slow past notice boards to that effect.*)

22, 61, and 102. (*Steamships to go dead slow in certain parts of the river.*)

23. (*Tugs not to tow vessels alongside or abreast of each other, except certain small craft; tow not to exceed* 160 *yards in length.*)

25. (*Order of berthing of vessels arriving together at a wharf.*)

* * * * *

32. Every vessel when on the river shall conform to the Board of Trade Rules with regard to lights; and every vessel moored to the buoys shall, between sunset and sunrise, have a white light exhibited in a globular lantern of not less than eight inches in diameter, placed in a conspicuous situation, and raised at least twelve feet above the deck, so as to show a clear, uniform, and unbroken light all round the horizon.

33. (*Sunken vessel to be lit by two red lights and a white light. A look-out man to be on board or in a boat, and to show red flags in daytime.*)

(*c*) *I.e.*, not exceeding five miles an hour.

As to Launches.

Local rules The Clyde).

34. (*Two small boats to lie in the river 200 yards above and below the launch; pilot of launch to show red flag with "launch" in white letters five minutes before launch: the boats thereupon to show similar flags; no craft in the river to pass boats so signalling until launch is over; if launch delayed, pilot to show white flag and boats to withdraw their red flags; twenty-four hours' notice of launch to be given to harbour-master; delay of traffic by launch.*)

* * * * *

110. (*Horse boats and steam ferry boats to carry white light twelve feet above the deck.*)

By Order in Council of 23rd February, 1891, it was directed that :—

Every dredger moored in the River Clyde, within the jurisdiction of the Clyde Trustees, shall, between sunset and sunrise, exhibit three bright lights from globular lanterns of not less than eight inches in diameter, placed in triangular form, not less than six feet apart, on the top of the framework athwartships, and of sufficient power to be distinctly visible, with a clear atmosphere, on a dark night at a distance of at least one mile.

By an order of 24th November, 1894, signal regulations for vessels entering and leaving Queen's Dock and Cessnock Dock were confirmed by the Board of Trade.

HUMBER.

The following rules were made under the powers of 25 & 26 Vict. c. 63, by Order in Council of 8th February, 1890 (*d*). They are to be read in connection with rules made by Order in Council of 7th March, 1887, applicable to certain parts of the Humber, Trent, and Ouse. An infringement of them brings a ship within the penalty of 35 & 36 Vict. c. 85, s. 17: *The Ripon*, 10 P. D. 65. Humber.

1. All vessels, as well sailing vessels as steamers (except dumb-craft), while navigating, or anchored, or moored in the River Humber, or in any part of the River Ouse below the North Eastern Railway bridge crossing the River Ouse at or near Hook, or in any part of the River Trent, at or below Gainsborough, shall observe and obey the "Regulations for Preventing Collisions at Sea," set out in the first schedule annexed to an Order in Council made in pursuance of and for the time being in force under the Merchant Shipping Act Amendment Act, 1862, or any statutory modification thereof, with the exceptions and additions made in the following rules.

2. All vessels as aforesaid when at anchor in the River Humber, or in any part of the River Ouse below the North

(*d*) See London Gazette, 1890, Vol. I. p. 796.

Local rules (Humber).

Eastern Railway bridge crossing the River Ouse at or near Hook, or in any part of the River Trent at or below Gainsborough, shall, between sunset and sunrise, instead of the light prescribed by Art. 8 of the said regulations, exhibit from the forestay, or otherwise near the bow of the vessel, where it can best be seen, a white light in a globular lantern of eight inches in diameter, and so constructed as to show a clear, uniform, and unbroken light visible all round the horizon at a distance of at least one mile; and in addition thereto, all vessels having two or more masts shall exhibit another white light at double (*e*) the height of the bow light, at the main or mizen peak, or the boom topping lift, or other position near the stern where it can best be seen.

3. Dumb-craft shall, between sunset and sunrise, exhibit in the forepart of the craft a white light behind an opal frosted or ground colourless glass shade, and distinctly visible on all sides, not less in height above deck or above any cargo or other obstruction on the deck:—

(1) When at anchor, than five feet;

(2) When being towed, than three feet; and the sternmost of the craft towed shall also exhibit a white light at the stern.

4. Every passenger ferry steamer plying between Hull and New Holland while under way and in motion shall in all weathers, between sunset and sunrise, carry at the stern a bright white light so constructed as to show an unbroken and uniform light over an arc of the horizon of twelve points of the compass, so fixed as to throw the light from right astern to six points on each side of the ship, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least one mile.

5. Every dredger moored in the River Humber or off any pier or quay shall, between sunset and sunrise, exhibit at the head a white light in a globular lantern of not less than eight inches in diameter, and a similar light at the stern, and in addition thereto an amber light four feet above each of the said white lights, all the said lights to be so constructed as to show a clear, uniform, and unbroken light, visible at a distance of at least one mile.

6. Every vessel shall be navigated with care and caution, and at a speed and in a manner which shall not involve risk of collision by causing a swell, or endanger the safety of other vessels or moorings, or cause damage thereto, or to the river banks. Special care and caution shall be used in navigating such vessel where there is much traffic, and when passing vessels employed in dredging or removing sunken vessels or other obstructions. If the safety of any vessel or moorings is endangered, or damage is caused thereto, or to the river banks

(*e*) This means not less than double; twenty-five feet from the deck held to comply with the rule: *The Magneta*, 15 P. D. 101.

by a passing steam vessel, the onus shall lie upon the master or owner of such vessel to show that she was navigated with care and caution, and at such a speed and in manner directed by these rules. Local rules (Humber).

7. (*Steamships approaching wreck-removing craft, or craft laying or removing buoys or drawing moorings, are to go dead slow* 300 *yards before reaching such craft and* 100 *yards after passing them.*)

8. Any vessel which, from unavoidable circumstances, may be compelled to anchor in the fairway of the river, shall, with as little delay as may be, remove to a proper roadstead, or otherwise proceed on her course.

9. In interpreting these rules the term "dumb-craft" shall include canal boats, mud-barges, and other barges, lighters, vessels "without masts," and vessels without either deck or mast, sloops, keels with their masts lowered, and rafts.

MANCHESTER SHIP CANAL (*f*).

Manchester Ship Canal.

1. Vessels to be at owners' risk. 2. Anchors, sails, spars, &c. to be stowed. 3. Cargo and draft of water to be declared.

4. The maximum speed in the canal must not exceed six miles an hour, unless a special permit has been obtained from the company's manager.

5. Sails not to be used. 6. Vessels to be navigated with care, especially when approaching locks or dredgers. 7. Burden of proof on vessel doing damage. 8. Vessels to have their own ropes and fenders. 9. Signals. 10. Signals at swing bridges. 11. Signals at locks. 12. Vessels not to impede entrances to locks. 13. Lockmaster to direct vessels in locks. 14. Engines not to be used when moored in locks.

15. When vessels proceeding in opposite directions are approaching one another, each vessel must be steered as closely as possible with safety to her own starboard side of the canal, so that they may pass on the port side of each other; each vessel must reduce her speed to dead slow, or, if necessary, stop altogether, so as to pass in safety. When vessels meet in the tidal portion of the canal when the tide is running, the vessel proceeding against the tide must give way, or tie up if necessary, until the vessel coming with the tide or stream has passed, and when vessels meet in the non-tidal portion of the canal, the vessel bound up the canal must give way, or tie up if necessary, until the vessel coming down has passed.

16. When one vessel is following another without the intention of passing, she must not approach nearer to the leading vessel than one furlong or eighth of a mile.

(*f*) These bye-laws have not (November, 1909) been confirmed by the Board of Trade as required by sect. 198 of the Manchester Ship Canal Act. It appears that the Sea Rules do not apply to the Manchester Ship Canal. Cf. *The Hare*, (1904) P. 331.

Local rules (Manchester Ship Canal).

17. No vessel must overtake another within half a mile of any lock or swing bridge. Every vessel when being overtaken must keep as far as possible to starboard side of mid-channel; and if after sunset, a white light must be shown over the stern. The vessel overtaking must pass on the port side of the vessel overtaken.

18. Wherever the slopes of the canal will permit, small craft must be kept entirely out of the track of sea-going vessels.

19. Whenever vessels under way may require to depart from the course laid down for them in these regulations for the purpose, for instance, of proceeding to or from any quay, wharf, works, or lock, or for any other reason, the responsibility of doing so in safety, having regard to passing traffic and to works in operation or otherwise, will rest upon the person in charge and the owners of such vessel (*g*).

20. Bridge gauges; headway. 21. Dredgers working to hoist black ball or white light on the side clear for traffic; red light on the other side; dredgers moored to show ordinary lights. 22. Hopper barges not to open doors. 23. Obstructions to be reported. 24. Rubbish not to be discharged. 25. Marials accidentally discharged to be reported. 26. Notice to be given of vessels sunk. 27. Vessels to be properly ballasted. 28. Vessels to be moored in proper places; never to moor or anchor in fairway; signals and other precautions when moored. 29. Watchman to be on board. 30. Vessels to be moored at orders of company's servants. 31. Towing not allowed except by order; length of tow line and of tows. 32. Fires and lights. 33. Explosives. 34. Timber not to be floated. 35. Discharging cargo. 36. Gangways. 37. Quays to be kept clear of cargo. 38. Nuisances. 39. Dogs and dangerous animals. 40. Smoking. 41. Defacing dock premises. 42. Horses and vehicles. 43. Cranes. 44. Labourers. 45. Passes. 46. Notice of leaving berth. 47. Obstructing officers.

The schedule of signals provides that: 1. Lights are to be in accordance with the sea regulations. 2. Vessels are to whistle when approaching others. 3. Or when overtaking others. 4. If a vessel is obliged to stop when another is following, she is to give three blasts, one short, one long, and one short. 5. When approaching a lock or swing bridge vessels are to whistle, when from Manchester, one long and one short blast; when from Eastham, one long blast; no whistle to be sounded if, by day, the lock or bridge signals are against the ship. 6. Fog signals to be according to the sea regulations. 7. If a vessel is aground or disabled, by day, three black balls or shapes vertically, and bell to be rung; by night, three red lights vertically, and bell to be rung.

There are bye-laws for vessels passing through the estuary and other locks, and bye-laws for pilots and pilotage. Pilotage is not compulsory.

MERSEY.

Mersey.

The following rules were made by Order in Council of 17th September, 1900, under 60 & 61 Vict. c. 21 (Mersey Channels Act, 1897), and the Merchant Shipping Act, 1894:—

RULES concerning the lights or signals to be carried and concerning the steps for avoiding collision to be taken by vessels navigating the River Mersey, and the sea channels or approaches thereto, between the Rock Lighthouse and the furthest point seawards to which such sea channels or approaches respectively are for the time being buoyed on both sides.

1. Every vessel of whatever description used in navigation

(*g*) See *The Halfdan*, Ship. Gaz. Feb. 22nd, 1908.

when in any part of the River Mersey or in the sea channels or approaches thereto, as above defined, shall on and after the seventeenth day of September, one thousand nine hundred, observe and obey the Regulations for Preventing Collision at Sea made in pursuance of the Merchant Shipping Act, 1894, hereinafter called the "general regulations," and which may from time to time be in force, with the exceptions and additions mentioned in the following rules (*h*). Local rules (Mersey).

2. A vessel when lying at any stage shall carry the light prescribed by Arts. 2 and 5 of the general regulations and Rule 5 hereof.

3. A vessel being towed shall, in addition to the lights prescribed by Art. 5 of the general regulations, carry the white light at her stern prescribed by Rule 5 hereof, and if such vessel is a steam vessel with steam up, she shall, although being towed, also carry the masthead light prescribed by Art. 2 (a), and may carry the additional light allowed by Art. 2 (e) of the general regulations.

4.—(a) A steam vessel, when towing another vessel or vessels, or when attached for the purpose of towing or manœuvring such vessel or vessels, shall carry the compulsory lights prescribed by Art. 3 of the general regulations, and such steam vessel when towing or attached as aforesaid to a vessel of four hundred and fifty feet or upwards in length shall carry the additional bright white light prescribed by the said Art. 3.

5. In lieu of Art. 10 of the general regulations, a vessel under way shall carry at her stern a white light. The light shall be fixed and carried in a lantern so constructed, fitted, and screened that it shall throw an unbroken light over an arc of the horizon of twelve points of the compass, viz., for six points from right aft on each side of the vessel, so as to be visible at a distance of at least a mile. Such light shall be carried as near as practicable on the same level as the side lights.

Provided that the vessels referred to in Art. 7 of the general regulations (viz., steam vessels of less than forty and vessels under oars or sails of less than twenty tons gross tonnage respectively, and rowing boats) shall not be obliged to carry the light prescribed by this rule, but if they do not carry such light they shall, when being overtaken by another vessel, show from the stern a white light or a flare-up light, as required by Art. 10 of the general regulations.

6. In lieu of Art. 11 of the general regulations, a vessel when at anchor, except when lying at any stage, shall carry in the forward part of the vessel, at a height of not less than twenty, and not exceeding forty feet above the hull, a white light in a lantern so constructed as to show a clear, uniform, and unbroken light visible all round the horizon at a distance of at least a mile, and at or near the stern of the vessel, and at

(*h*) The numbers quoted in these rules refer to the articles in the general regulations made on the 27th November, 1896.

Local rules (Mersey).

such a height that it shall not be less than fifteen feet lower than the forward light, another such light.

Provided that a vessel within Art. 7 of the general regulations (viz., steam vessels of less than forty and vessels under oars or sails of less than twenty tons gross tonnage respectively, and rowing boats) when at anchor shall not be obliged to carry the lights prescribed by this rule; but if they do not carry them, each of such vessels shall carry, in a place where it can best be seen, and at a height above the gunwale of not less than nine feet, a white light in a lantern so constructed as to show a clear, uniform, and unbroken light visible all round the horizon at a distance of at least a mile.

7. A steam vessel when at anchor, except when lying at any stage, shall, between sunrise and sunset, carry in the forward part of the vessel, at a height of not less than twenty, and not exceeding forty feet above the hull, a black ball not less than two feet in diameter.

Provided that in the case of a steam vessel within Art. 7 of the general regulations, such black ball may be carried at a height above the gunwale of not less than nine feet.

8. A vessel, having on board any explosive except ship's ammunition, shall, when at anchor, carry a red light, in a globular lantern not less than ten inches in diameter, six feet above the forward white light prescribed by Rule 6 hereof.

Provided that a vessel entitled to carry and carrying the white light prescribed by the proviso to Rule 6 shall carry the red light above described not less than three feet above such white light.

9. A vessel anchored to mark the position of a wreck or other obstruction shall carry in all weathers, from sunset to sunrise, two bright white lights, in lanterns so constructed as to show a clear, uniform, and unbroken light visible all round the horizon, at a distance of at least a mile, which lights shall be placed horizontally on a cross-yard on the foremast at a height not exceeding twenty feet above the hull, and not exceeding twenty feet apart, and the said vessel shall carry in all weathers, between sunrise and sunset, two black balls placed as hereinbefore ordered with regard to the lights aforementioned.

10. A vessel of three hundred and fifty feet or upwards in length when at anchor shall, during fog, mist, or falling snow, or heavy rain storms, whether by day or night—

(1.) Ring in the forward part of the vessel the bell prescribed by Art. 15 (d) of the general regulations.

(2.) Sound at or near the stern of such vessel a loud-toned gong or a loud-toned triangle or other loud-toned article that cannot be mistaken for a bell, whistle, siren, or fog-horn.

The bell shall be rung, and the gong, triangle, or other article sounded respectively, for a period of about five seconds, at intervals of not more than one minute.

The length of a vessel shall be deemed to be the length appearing in her certificate of registry. Local rules (Mersey).

11. Every steam vessel under way shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel.

Dredgers.

12. The word "dredger" shall mean any vessel fitted with plant or apparatus for dredging or excavating, or fitted with apparatus for eroding or dispersing sand and other material.

13. A dredger when at work or in position for working shall carry the following lights and signals, viz.:—

Lights between sunset and sunrise:—

(1.)—(a) *Forward.*—In the forward part of the dredger, at a height of not less than twenty and not exceeding forty feet above the hull, a white light in a lantern so constructed as to show a clear, uniform, and unbroken light, visible all round the horizon at a distance of at least a mile.

(b) *Amidships.*—Three such white lights placed in triangular form, not less than eight feet apart, the base of the triangle to be at least ten feet higher than the forward light, and to be also higher than and clear of the framework, funnels, or any other erections upon the dredger.

(c) *Aft.*—One such white light at or near the stern of the dredger, and at such a height that it shall not be less than fifteen feet lower than the forward light.

(2.) A dredger, when not making any way through the water, shall not carry side or stern lights, but when making way shall carry the usual red and green side lights and the stern light prescribed by Rule 5 hereof.

Signals between sunrise and sunset:—

Amidships.—Three red balls, of not less than two feet in diameter, placed in triangular form not less than eight feet apart, the base of the triangle to be higher than and clear of the framework, funnels, or any other erections upon the dredger.

14. The lights and signals required to be carried by Rule 13 are to be taken by other vessels as signals that the vessel showing them is not under command, and cannot therefore get out of the way.

15. A dredger when not at work nor in position for working shall carry the ordinary lights and signals required to be carried by vessels for avoiding collisions, as provided by these rules and by the rules and regulations now and from time to time in force under the Merchant Shipping Act, 1894, and the Mersey Channels Act, 1897.

Local rules (Suez Canal).

SUEZ CANAL.

The substance of the regulations for the navigation of the Suez Canal (of October, 1899) is as follows:—The maximum speed is to be five-and-a-third knots. All ships over 100 tons are to take pilots; "but the responsibility as regards the management of the ship devolves solely on the captain" (*i*); yards are to be braced forward; jibbooms to be in; and a kedge ready to let go astern; a boat with hawser is to be towed astern: watch to be kept by day and night: hands are to be ready to let go, ease or cut hawsers; hawsers of ships moored to be eased to passing craft; speed to be slackened when passing works, dredgers, and other craft, and bow anchors ready to let go; whistles to be blown on approaching curves in the canal or other craft; "whenever a collision appears probable, no ship must hesitate to run aground and thus avoid collision. The expenses consequent upon a grounding under these circumstances shall be defrayed by the ship in fault"; an overtaking ship not to pass the other ahead whilst under way, or except as directed; sailing craft not to navigate at night; no steamship to navigate at night except she has approved searchlights; usual ships' lights to be carried; searchlights to be extinguished when moored in certain parts of the Great Bitter Lakes, and when coming to Port Said from the south; stern light to be red when accidentally stopped, and whistle to be sounded four or five times to approaching craft; ships moored to show white light at stern and two white lights on free side of channel; navigation at night to be at ships' risk; no ship to anchor in canal; whistle not to be sounded in port, except as danger signal; ship aground to wear pennant at mast-head by way and to show red light, or if fast aground, two red lights at night; ship moored, pennant at half-mast and by night the lights above stated; square flag at mast-head to mean "slacken your speed"; white light above two red lights to be shown by ships stopped by reason of damage or anchored in certain parts of Great Bitter Lakes; signals for dredgers and hoppers (*k*).

TEES, RIVER.

Tees, River.

Bye-laws dated the 2nd May, 1887, made under the Tees Conservancy Act and the Harbours, Docks, and Piers Clauses Act, 1847, provide:—(3) owner and master, and also pilot, if any, to be responsible for observance of bye-laws; (5) ships to be moored under direction of harbour-master, and anchors to be buoyed; (6) ships at anchor or moored to have sails furled, yards, davits, bowsprits, &c. to be peaked and rigged in; (7) anchors of ships moored to be inboard clear of gunwale or hanging from hawse pipe; (8) three ships only abreast at staiths, &c.; (9) ships at staiths, &c. not to lay anchor in channel; (10) ships not to lie between tiers: (13) steamships to carry the regulation lights, except that "in case of a steamship having no foremast it shall be sufficient if the said white light (*the masthead light*) be at a height not less than twelve feet above the hull, fixed on a staff not more than thirty feet from the stem; and in the case of a steam vessel not exceeding twelve feet in breadth, it shall be sufficient if such light be at a height not less than six feet above the hull, fixed on a staff not more than twelve feet from the stem"; (15) steamship in tow or under sail and not under steam to carry side lights only; (17) a "bright white light" to be shown from the stern of a ship being overtaken; (18) vessels at anchor and also outside vessel of tier to exhibit riding light; (19) open cargo and fishing craft and rafts to use the regulation lantern with green and red

(*i*) As to the owner's liability, see *The Guy Mannering*, 7 P. D. 132.

(*k*) There is a practice in the Suez Canal for a southward going vessel, meeting a northward going vessel, to tie up until the latter has passed her. As to this, and as to the navigation in general of the Canal, see *The Clan Cumming*, (1907) P. p. 311.

slides; (20) ships to obey harbour-master. As to the navigation of the river, there are the following rules:— Local rules (Tees).

21. Every vessel navigating the river shall keep the starboard side, so that the port-helm may always be applied to clear vessels proceeding in the opposite direction (*l*).

22. Every steam vessel when approaching another vessel on an opposite course or from an opposite direction shall, before approaching within 100 yards, slacken her speed, and keep as near as possible to the starboard side of the river, so as to afford the greatest facility for passing the approaching vessel (*m*).

23. Every steam or other vessel (and whether being towed or towing another vessel) must so approach the river from sea as to enter on that side of the channel reserved for their navigation.

24. All vessels when under way, requiring to pass over a part of the channel which is not within that portion reserved for their navigation, for the purpose of proceeding to or from landings, moorings, or other places, must take upon themselves the responsibility of doing so in safety with reference to the passing traffic; and any vessel continuing its navigation after reaching such landing, mooring, or other place, must again proceed to the side of the river specified as the proper side for its navigation, so soon as practicable, and take upon itself the responsibility of doing so in safety, with respect to the passing traffic.

25. Vessels crossing the river, and vessels turning, must take upon themselves the responsibility of doing so safely with reference to the passing traffic (*n*).

26. No steam vessel shall at any time be navigated in any part of the river at a higher rate of speed than a maximum rate of seven statute miles per hour over the ground (*o*).

27. Whenever there is a fog, no steam vessel shall be navigated in any part of the river at a higher rate of speed than three miles per hour.

28. When steam vessels are proceeding in the same direction, but with unequal speed, the vessel which steams slowest shall, when overtaken, keep sufficiently to that bank of the river which is on her own starboard side, and shall offer no obstruction whatever, by crossing the channel or otherwise, to the free passage of the faster vessel, and shall ease and, if necessary, stop the engine as soon as a faster vessel comes within 100

(*l*) See *The Thetford*, 6 Asp. M. C. 179, a decision upon a similar rule in the Tyne; *infra*, p. 545.

(*m*) These rules apply whenever two vessels navigating at all near the centre of the river are approaching one another, even though in such positions as to show one another their green lights. Unless there is extreme necessity, they must both of them port. *The Mary Lohden*, 6 Asp. M. C. 262, decided under the corresponding Rules 17 and 18 of 1870.

(*n*) See note (*m*), *supra*.

(*o*) An earlier rule, which did not state whether the speed was over the ground or through the water, occasioned the decision in *The R. L. Alston*, 8 P. D. 5.

Local rules (Tees).

yards, and in like manner the faster vessel shall ease its engine when it comes within 100 yards of the slower vessel, until it has passed the vessel so overtaken; and, that ignorance of the approach of the faster vessel may not be pleaded by the master of the slower vessel, it shall be sufficient intimation of such approach if the steam-whistle of the faster vessel be three times sounded; but no vessel overtaking any other vessel will be justified in passing such vessel at any of the points or turnings of the river, or at any dock entrance.

29. Every steam vessel other than a steam vessel employed in towing, meeting, or overtaking any sailing vessel or steam tug with sailing vessels in tow, shall ease its engines before arriving within 100 yards of, and until it shall have passed, the sailing vessel or steam tug and trains. Every steam tug and train, when meeting another vessel, shall, in proper time, put their helms to port, and, when overtaken, shall keep sufficiently to the proper side of the river to allow the vessel overtaking them to pass.

30. All vessels towing in from sea with a long scope of tow-line must shorten the same on getting inside the river, and before reaching the Eston Wharf. The tow-line, when so shortened, must not exceed twenty-five fathoms in length.

31. Every steam tug or other steam vessel towing a vessel into the port which shall not already have a pilot on board, and whether showing a signal for a pilot or not, shall be bound to ease, or stop if necessary, to enable a pilot to board the vessel, unless the master thereof shall have previously informed the master of the steam vessel that he did not intend to take a pilot.

32. No vessel shall be allowed to drift in any part of the river or harbour. Every vessel must be properly navigated, or moored clear of the navigable channel. Vessels proceeding to any dock, and arriving off the entrance of such dock before the signal for admission is hoisted, must keep on either side of the navigable channel, and out of the fairway of the river or dock traffic, until the signal is hoisted for their reception.

33. No steam tug or other steam vessel shall tow two or more vessels alongside each other, nor shall tow more than one raft of timber when such rafts exceed 150 feet in length or thirty feet in breadth.

34. A steam vessel shall not tow at one time more than six keels, wherries, or other boats.

35. *(Vessels to be properly manned.)*

36. Every steam vessel having any vessel or vessels in tow shall attend upon the vessel or vessels in tow until such vessel or vessels is or are properly moored or secured.

* * * * *

42. *(Vessels likely to be damaged by surge of passing craft may show red flag or red light; thereupon passing steam vessels to go dead slow whilst within 100 yards of the signal.)*

43. No steam vessel shall go more than a speed of six statute miles per hour over the ground in that part of the river Tees

between the Commissioners' Graving Dock and Bamlett's Bight; nor at a greater speed than five statute miles per hour over the ground between Bamlett's Bight and Stockton Bridge. Local rules (Tees).

44. (*Steamships' engines to be stopped when within fifty yards of small boats coming alongside.*)

45. (*Vessels approaching landing steps to ring bell or sound whistle.*)

THAMES.

The following bye-laws for the navigation of the River Thames are made under the Thames Conservancy Act, 1894. In addition to these bye-laws, there are in force bye-laws relating to the Tower Bridge passage and navigation. Thames.

1. (*Repeals former bye-laws, as from confirmation by the Board of Trade of the present bye-laws.*)

2. (*Title; commencement.*)

3. These bye-laws shall be applicable to the Thames as defined by the Thames Conservancy Act, 1894, and to all places over which the Conservators have jurisdiction to make bye-laws under the provisions of the said Act, except where the same or any of them are expressly limited to any particular part or parts of the river or place.

4. In these bye-laws the words and expressions hereinafter mentioned shall have the meanings hereby assigned to them respectively, unless there be something in the subject or context repugnant to such construction, viz.:—

The expression "the Thames" or "river" means and includes so much of the Rivers Thames and Isis respectively as are between the town of Cricklade, in the county of Wilts, and an imaginary straight line drawn from the entrance to Yantlet Creek, in the county of Kent, to the City Stone, opposite to Canvey Island, in the county of Essex, and so much of the River Kennet as is between the common landing place at Reading, in the county of Berks, and the River Thames, and so much of the River Lee and Bow Creek respectively as are below the south boundary stones in the Lee Conservancy Act, 1868, mentioned, and all locks, cuts, and works within the said portions of rivers and creeks: Provided that no dock, lock, canal, or cut existing at the passing of the Thames Conservancy Act, 1894, and constructed under the authority of Parliament, and belonging to any body corporate established under such authority, and no bridge over the River Thames or the River Kennet belonging to or vested in any county council or municipal authority, or to or in any railway company, shall be deemed to form part of the Thames.

(*"Person," "horse," defined.*)

The word "vessel" includes any ship, lighter, keel, barge, launch, houseboat, pleasure or other boat, randan, wherry, skiff, dingey, shallop, punt, canoe, yacht, raft, float, float

Local rules (Thames).

of timber, or craft whatever, whether navigated by steam or otherwise.

The word "lighter" means any dumb-barge or other like craft for carrying goods, or any sailing barge with her mast and gear lowered on deck.

The expression "steam vessel" includes any vessel propelled by machinery.

The expression "steam launch" includes any vessel propelled by steam, electricity, or other mechanical power, not being used solely as a tug or for the carriage of goods, and not being certified by the Board of Trade as a passenger steamer to carry two hundred or more passengers.

(*Definitions of "pleasure boat,"* &c.)

The expression "steam whistle" includes any efficient sound signal approved by the Conservators.

The word "master," when used in relation to any vessel, means any person, whether the owner, master, or other person, lawfully or wrongly having or taking the command, charge, or management of the vessel for the time being.

(*Definitions; "harbour-master,"* &c.)

The expression "under way" applied to a vessel means when she is not at anchor or made fast to the shore or aground.

The word "visible," when applied to lights, means visible on a dark night with a clear atmosphere.

5. There shall be maintained as far as practicable between London Bridge and the Tower Bridge a navigable passage, not less than 200 feet wide for vessels passing up and down the river.

6. There shall be maintained as far as practicable between the Tower Bridge and Barking Creek a navigable passage, not less than 300 feet wide, for vessels passing up and down the river, and in all parts of the river where the navigable passage shall be in the stream between tiers of vessels, the space for the navigable passage shall be reckoned from the vessel in each of the said tiers nearest to the other or opposite tier.

7. No float or floats or raft or rafts of timber, either singly or together exceeding sixty feet in length (excepting timber in one length) and twenty feet in width, shall be permitted to go into or pass along any part of the river, nor shall any following float or raft of timber go within the distance of 300 yards of any other such float or raft.

8. All vessels navigating Gravesend Reach are to keep to the northward of a line defined by a skeleton beacon erected upon the India Arms Wharf on with the high chimney at the Cement Works at Northfleet, and all vessels intending to anchor in the Reach are to bring up to the southward of that line. A lantern is placed on the above beacon which shows (at night) a bright light to the northward of the same line and a red light to the southward of it over the anchorage ground (*p*). All vessels so

(*p*) A vessel to the southward of this line, and moving from buoy to buoy for the purpose of bringing up at the first one that is vacant, is

anchoring and remaining beyond a period of twenty-four hours are to be moored. Local rules (Thames).

9. Any vessel slipping or parting from her anchor shall leave a buoy to mark the position of such anchor.

This bye-law shall not apply to vessels belonging to the Conservators employed in raising a wreck or to any wreck in charge of the Conservators.

10. No anchor shall be allowed to lie or remain in the river outside of the line of the tiers, and if any anchor of any vessel shall be so allowed to lie or remain in the river outside of the line of any of the tiers the harbour-master may deliver or cause to be delivered on board the vessel from which such anchor is put out a notice in writing, signed by him, requiring the master of such vessel forthwith to remove such anchor, and if the same be not so removed after the delivery of such notice, the harbour-master may remove or cause to be removed such anchor, and the expenses of such removal shall be recoverable from the owner or owners, or the master of the said vessel, to the use of the Conservators, as provided by the Thames Conservancy Act, 1894.

11. No vessel shall navigate or lie in the river with its anchor or anchors a-cock-bill, nor with its anchor or anchors hanging by the cable perpendicularly from the hawse unless the ring shall be awash (*q*), except during such time as may be necessary for fishing or catting such anchor or anchors or for getting such vessel under way, or for bringing up.

12. (*Steam vessels not to be navigated or moored near Woolwich Arsenal or Victualling Yard, Deptford.*)

13. The engine or engines of any steam vessel shall not be set in motion during the time such steam vessel is moored in the river, except with the permission of the Conservators or their harbour-master.

14. The master of every steam vessel navigating the river shall be on one of the paddle boxes or on the bridge of such steam vessel, and shall keep or cause to be kept a proper look-out during the whole of the time it is under way, and shall

not "navigating Gravesend Reach" in breach of this rule. *The City of Delhi*, 6 Asp. M. C. 269.

(*q*) Under former rules, which required the stock to be awash, it was held that the stock might nevertheless be under water. *The Orwell*, Ad. Div. May, 1887; *The J. R. Hinde*, (1892) P. 231. In *The Six Sisters*, (1900) P. 302, it was held that, in the circumstances of that case, it was negligent to have the pea of the anchor only four feet under water, though the ring was awash. A vessel made fast to another, and having her anchor stock out of the water in breach of this rule, was held responsible for the damages caused by her anchor to a barge which collided with her in a fog. *The Rose of England*, 6 Asp. M. C. 304. A vessel which, proceeding along the line of buoys in the anchorage ground in Gravesend Reach, and finding them all occupied, gets her anchor a-cock-bill for the purpose of coming to anchor, does not do so before it is "absolutely necessary." Cf. *The City of Delhi*, 6 Asp. M. C. 269; *The Margaret*, 6 P. D. 76; *The J. R. Hinde*, (1892) P. 231; *The Dunstanborough*, *ibid.* 363; *The Monte Rosa*, (1893) P. 23.

Local rules (Thames).

remove or cause to be removed any person, other than the crew, who shall be on the paddle boxes or bridge of such steam vessel.

Above Teddington Lock this bye-law shall apply only to steam vessels used for the carriage of passengers or for purposes of excursions which are not steered from the bows or bridge.

15. (*Precautions in taking in or discharging ballast.*)

16. No lighter or sailing barge shall be navigated on the river below Battersea Bridge without having a freeboard of at least fifteen inches, such freeboard to be measured amidships, and coamings (if any) may be included in such measurement, but in no case must the top of the gunwale be less than three inches above the water's edge, when such craft is decked and hatched, or less than six inches above the water's edge when such craft is open.

17. (*Penalties for intoxication and use of abusive or indecent language, &c.*)

18. (*As to payment of tonnage dues on vessels not entered at the Customs.*)

19. (*Piers to be lighted or marked.*)

20. No vessel shall be moored to or remain at any pier or premises belonging to the Conservators without the permission of the officer in charge of such pier or premises being first obtained, and shall move away when ordered by such officer so to do.

21. (*As to advertisements on vessels or river.*)

22. All vessels navigating the river shall be navigated singly and separately, except small boats fastened together or towed alongside or astern of other vessels, and except vessels towed by steam.

23. Vessels towed by steam navigating the river below the Albert Bridge at Chelsea, shall, if more than two in number, be placed two abreast (except vessels trading on any canal, and not exceeding fourteen feet nine inches in width, which may be placed three abreast), and not more than six (*r*) of any such vessels shall be towed together at the same time, and no tow of vessels shall exceed in length the following limits, namely: Above Albert Bridge, 400 feet; between London Bridge and the landing place at the end of Trinity Street, Charlton, 320 feet; below the said landing place, 400 feet; to be calculated from the stern of the vessel towing to the stern of the aftermost vessel towed.

24. Vessels towed by steam navigating the river between the Albert Bridge at Chelsea and Kingston Bridge may, if more than two in number, be placed two abreast (except vessels trading on any canal and not exceeding fourteen feet nine inches in width, which may be placed three abreast), or may be placed in a single line, but not more than six of any such vessels shall be towed together at the same time, and the distance

(*r*) See *Gadney* v. *Rough*, 40 L. T. 258.

between any two of the vessels so towed shall not exceed fifty feet. Local rules (Thames).

25. Vessels towed by steam navigating the river above Kingston Bridge shall be placed in a single line and not more than four such vessels shall be towed together at the same time, and the distance between any two of the vessels so towed shall not exceed forty feet.

26. No vessel exceeding 301 feet in length, and in the case of a paddle-wheel steamer exceeding sixty-five feet in width measured from the outside of the paddle boxes, and in the case of other vessels exceeding thirty-six feet in width, which is used only or principally for the carriage of passengers, or for the purposes of excursions, shall be navigated in the river above Blackwall Pier.

For the purposes of this bye-law the length of a vessel shall be deemed to be the length appearing in her certificate of registry.

27. Any lighter navigating the river shall, when under way, have at least one competent man constantly on board for the navigation and management thereof, and all such craft exceeding fifty tons, but of not more than 150 tons, burden shall, when under way, have one man in addition, and all such craft exceeding 150 tons burden shall, when under way, have two men in addition on board to assist in the navigation and management of the same, with the following exceptions:—When being towed by a steam vessel, or when being moved to and fro between any vessels or places a distance not exceeding 200 yards.

The word "burden" in this bye-law shall have the same meaning as the expression "burden tonnage," defined by the Thames Watermens and Lightermens Act, 1893.

Lights and Signals, Steering and Sailing.

Preliminary.

In obeying and construing the following bye-laws relating to lights and signals and steering and sailing, due regard shall be had to all dangers of navigation and of collision, and to any special circumstances which may render a departure from them necessary in order to avoid immediate danger.

Nothing in the following bye-laws shall exonerate any vessel, or the owner, master, or crew thereof, from the consequences of any neglect to carry lights or signals or to keep a proper look-out, or of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case (*s*).

(*s*) Under this rule it was held that a barge fast at night to another barge attached to a ship lying at tiers and swinging or about to swing to the tide, ought to have someone to warn passing vessels, by light or otherwise, of her position. *The St. Aubin*, (1907) P. 60.

Local rules (Thames).

The bye-laws as to lights shall be complied with in all weathers from sunset to sunrise, and during such time no other lights, which may be mistaken for the lights prescribed by the bye-laws, shall be exhibited.

In the following bye-laws, every steam vessel which is under sail and not under steam is to be considered a sailing vessel, and every vessel under steam, whether under sail or not, is to be considered a steam vessel.

Lights required between Yantlet Creek and Teddington Lock.

28. A steam vessel other than a steam launch when under way shall carry—

(a) On or in front of the foremast, or if a vessel without a foremast, then in the forepart of the vessel, at a height above the hull of not less than twenty feet, and if the breadth of the vessel exceeds twenty feet, then at a height above the hull not less than such breadth, so, however, that the light need not be carried at a greater height above the hull than forty feet, a bright white light so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, viz.:—from right ahead to two points abaft the beam on either side, and of such a character as to be visible at a distance of at least two miles. Provided that steam vessels which navigate both above and below London Bridge shall not be required to carry their lights at a greater height than twelve feet above the hull.

Steam vessels navigating above London Bridge only, may carry the white light in any convenient position above the hull.

(b) On the starboard side, a green light, so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least one mile.

(c) On the port side, a red light, so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible at a distance of at least one mile.

(d) The said green and red side lights shall be fitted with inboard screens, projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

(e) A steam vessel, when towing another vessel, shall, in addition to her side lights, carry two bright white lights in a vertical line, one over the other, not less than four feet apart. Each of these lights shall be

of the same construction and character and shall be carried in the same position as the white light which other steam vessels are required to carry.

Such steam vessel may carry a small white light abaft the funnel or aftermast for the vessel towed to steer by, but such light shall not be visible forward of the beam.

29. A sailing vessel under way, and any vessel being towed other than a lighter, shall carry the same lights as are prescribed by bye-law 28 for a steam vessel under way, with the exception of the white lights mentioned therein, which they shall never carry (*t*).

30. With the exceptions hereinafter named, a vessel under 150 feet in length, when at anchor (*u*) or moored, shall carry forward, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light (hereinafter called the riding light) in a lantern so constructed as to show a clear uniform and unbroken light, visible all round the horizon at a distance of at least one mile.

A vessel of 150 feet or upwards in length, when at anchor, shall carry in the forward part of the vessel, at a height of not less than twenty and not exceeding forty feet above the hull, one such light, and at or near the stern of the vessel, and at such a height that it shall be not less than fifteen feet lower than the forward light, another such light.

The exceptions are as follows:—

(a) Where masted vessels are lying in tiers, the outermost off shore masted vessel only of each tier shall carry the riding light.

(b) Lighters lying at the usual barge moorings in the river above Gravesend are not required to exhibit the riding light.

(c) Every steam vessel, sailing vessel, or lighter moored permanently head and stern in the river shall, in addition to or in lieu of the riding light, exhibit such light or lights as the Conservators shall from time to time order or direct.

The length of a vessel shall be deemed to be the length appearing in her certificate of registry.

A vessel of 150 feet or upwards aground in or near a fairway shall carry the above light or lights (*x*).

31. Every person in charge of a lighter, when under way and not in tow, shall, between sunset and sunrise, when below

(*t*) A sailing barge with her mast lowered, dredging stern foremost, assisted by her anchor ahead, is not required by this rule to carry her side lights. *The Indian Chief*, 14 P. D. 24. As to the duty of a ship so navigating to warn an approaching vessel, see *The Juno*, 7 Asp. M. C. 506.

(*u*) As to a vessel rounding or swinging to her anchor, see *The Vega*, (1895) P. 156.

(*x*) *Semble*, she is not required in the daytime to carry the two balls of Art. 4 of the sea regulations: *The Carlotta*, (1899) P. 223.

Local rules (Thames).

London Bridge, have a white light always ready, and exhibit the same on the approach of any vessel.

32. The person in charge of the sternmost or last of a line of lighters, when being towed, shall exhibit, between sunset and sunrise, a white light from the stern of his lighter.

33. A vessel, below London Bridge, which is being overtaken by another vessel, shall show from her stern to such other vessel a white light or a flare-up light.

This bye-law shall not apply to boats, wherries, punts or canoes, nor to lighters navigating above Barking Creek.

34. All vessels, when employed to mark the positions of wrecks or other obstructions, shall exhibit two bright white lights, placed horizontally, not less than six nor more than twelve feet apart.

35. Every steam dredger moored in the river shall exhibit three bright white lights from globular lanterns, not less than eight inches in diameter, the said three lights to be placed in a triangular form at right angles to the keel, and to be of sufficient power to be visible at a distance of at least one mile, and to be placed not less than six feet apart on the highest part of the framework athwartships.

Fog and Steam Whistle Signals.

36. All signals prescribed by this bye-law for vessels under way shall be given:—

(1) By steam vessels, on the whistle.

(2) By sailing vessels, and vessels other than lighters towed, on the fog-horn.

The words "prolonged blast" used in this bye-law shall mean a blast of from four to six seconds' duration.

A steam vessel shall be provided with an efficient whistle sounded by steam or some substitute for steam, so placed that the sound may not be intercepted by any obstruction, and with an efficient fog-horn to be sounded by mechanical means, and also with an efficient bell. A steam launch shall be provided with a similar whistle, or other efficient sound signal to be approved by the Conservators. A sailing vessel of twenty tons gross tonnage or upwards shall be provided with a similar fog-horn and bell.

In fog, mist, falling snow, or heavy rain storms, whether by day or night, the signals described in this bye-law shall be used as follows, viz.:—

(a) A steam vessel having way upon her shall sound at intervals of not more than two minutes a prolonged blast.

(b) A steam vessel under way, but stopped and having no way upon her, shall sound at intervals of not more than two minutes two prolonged blasts with an interval of about one second between them.

(c) A sailing vessel under way shall sound, at intervals of not more than one minute, when on the starboard tack,

one blast, when on the port tack, two blasts in succession, and when with the wind abaft the beam, three blasts in succession.

(d) A vessel when at anchor shall, at intervals of not more than one minute, ring the bell rapidly for about five seconds.

(e) A vessel when towing, and a vessel under way which is unable to get out of the way of an approaching vessel through being not under command or unable to manœuvre as required by these bye-laws, shall, instead of the signals prescribed in sub-sections (a) and (c) of this bye-law, at intervals of not more than two minutes, sound three blasts in succession, viz.: one prolonged blast followed by two short blasts. A vessel towed may give this signal, and she shall not give any other.

Sailing vessels of less than twenty tons gross tonnage shall not be obliged to give the above-mentioned signals, but if they do not they shall make some other efficient sound signal at intervals of not more than one minute.

37. Every vessel shall, in a fog, mist, falling snow, or heavy rain storms, go at a moderate speed, having careful regard to the existing circumstances and conditions.

A steam vessel hearing apparently forward of her beam the fog signal of a vessel, the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines and then navigate with caution until danger of collision is over.

38. All steam and sailing vessels when in the fairway (*y*) of the river and not under way shall, at intervals of about one minute, ring the bell rapidly for about five seconds (*z*).

39. When two steam vessels are in sight of each other, and are approaching with risk of collision, the following steam signals shall be intimations of the course they intend to take:—

(a) One short blast of the steam whistle of about one second's duration, to mean—"I am directing my course to starboard."

(b) Two short blasts of the steam whistle, each of about one second's duration, to mean—"I am directing my course to port."

(c) Three short blasts of the steam whistle, each of about two seconds' duration, to mean—"My engines are going full speed astern."

(*y*) A sailing barge, brought up above and inside the West Blyth buoy, was held to be in the fairway so as to be required to ring her bell. *The Blue Bell*, (1895) P. 242; cf. *The Clutha Boat* 147, (1909) P. 36. In America "fairway" has been defined to mean "water upon which vessels of commerce habitually move"; not necessarily the deep-water channel marked by buoys. *The Oliver*, 22 Fed. Rep. 848.

(*z*) A ship that has accidentally taken the ground is not required to ring a bell: *The Carlotta*, (1899) P. 223, 229. And the rule (38) does not apply in clear weather: *The Rhein*, 86 L. T. 265.

Local rules (Thames).

40. When a steam vessel, in circumstances other than those mentioned in bye-law 36, is turning round, or for any reason is not under command and cannot get out of the way of an approaching vessel, or when it is unsafe or impracticable for a steam vessel to keep out of the way of a sailing vessel, she shall signify the same by four blasts of the steam whistle in rapid succession, each blast to be of about one second's duration (*a*).

41. A vessel coming out of dock shall signify the same by a prolonged blast of the steam whistle of not less than four seconds', nor more than six seconds', duration, except in the case of a vessel coming out of the St. Katharine's Dock requiring the bascules of the Tower Bridge to be raised in order to get into position in the river, which shall signify the same by a prolonged blast of the steam whistle of not less than five seconds' duration, followed by three short blasts in rapid succession.

In the case of a vessel not under steam, the tug boat in attendance shall make the foregoing signals.

Sound Signals for Vessels in Sight of One Another.

42. The words "short blast" used in this bye-law shall mean a blast of about one second's duration.

When vessels are in sight of one another, a steam vessel under way, in taking any course authorized or required by these bye-laws shall indicate that course by the following signals on her whistle, viz.:—

One short blast to mean—"I am directing my course to starboard."

Two short blasts to mean—"I am directing my course to port."

Three short blasts to mean—"My engines are going full speed astern."

43. The signals by whistle mentioned in the preceding bye-laws shall not be made by means of a siren, or any instrument other than an ordinary steam whistle or other efficient sound signal previously approved by the Conservators, and shall not be used on any occasion or for any purpose except those therein mentioned, and no other signal by whistle or sound signal shall be made by any vessel.

(*a*) In *The Longueuton*, 6 Asp. M. C. 302, a sailing barge was found in fault for disregarding a steamer's signal given under a similar rule. The steamer's difficulties were created by causes beyond her control. It was not decided whether, if this had not been the case, the barge would necessarily have been in fault for taking no step; but Sir James Hannen expressed the opinion that in any case the prudent course for a sailing ship would be to act at once upon hearing the signal. See also *The New Pelton*, (1891) P. 258; *The Wega*, (1895) P. 156.

Local rules (Thames).

Steering and Sailing.

44. When two sailing vessels are approaching each other so as to involve risk of collision, one of them shall keep out of the way of the other, viz.:—

(a) A vessel which is running free shall keep out of the way of a vessel which is close-hauled.

(b) A vessel which is close-hauled on the port tack shall keep out of the way of a vessel which is close-hauled on the starboard tack.

(c) When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.

(d) When both are running free, with the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward.

(e) A vessel which has the wind aft shall keep out of the way of the other vessel.

45. If a sailing vessel and a steam vessel are proceeding in such a direction as to involve risk of collision, the steam vessel shall keep out of the way of the sailing vessel.

46. When two steam vessels or steam launches, proceeding in opposite directions, the one up and the other down the river (*b*), are approaching each other so as to involve risk of collision, they shall pass port side to port side (*c*).

47. Steam vessels navigating against the tide shall, before rounding the following points (*d*), viz., Coalhouse Point,

(*b*) In *The Odessa*, 4 Asp. M. C. 493 (followed in *The Berrington* and *The Ostrich*, Ad. Div. 9th March, 1883; but cf. *The Joseph Ruckett*, Ship. Gaz. March 5th, 1901), it was held that these words, in former rules, were not to be interpreted in the same way as the "end-on" rule (Art. 18) of the sea regulations. Two vessels approaching each other, one bound up and the other down the river, may be within the Thames rule, although not end-on, or nearly end-on, within the meaning of the sea regulations. The Thames rule applies if the ships are on courses which involve risk of collision, but not otherwise. See *The Guildhall*, (1908) P. 29; (1908) A. C. 159; *The Lady Wodehouse* (188), 2 Times L. R. 252. The rule does not apply to a ship with no way on her, waiting under a point for other ships to pass clear. *The Alltyre*, Ad. Div. 27th Feb. 1885.

(*c*) In *The Libra*, 6 P. D. 139, it was said by Brett, L. J., in the Court of Appeal, that this (r. 46) and the following rules (rr. 22 and 23 of 1880) are not mutually exclusive of each other or inconsistent; and that, although the intention of the rule as to waiting under points is that the state of things contemplated in the preceding rule shall not arise, "nevertheless, if that state of things does arise, there is nothing in [the latter, r. 23 of 1880], rule which prevents [the former, r. 22 of 1880], under the circumstances, from applying.

(*d*) In *The Margaret*, 9 P. D. 47; 9 A. C. 873, the meaning of this expression was much discussed. Butt, J., and the House of Lords held that it contemplates two vessels in different reaches sighting each other over the point, or at any rate before they both arrive off the point; differing from the view of the Court of Appeal, that the rule applies when one of the ships is on, or off the pitch of, the point. "The point begins where the vessel, . . . having

Local rules (Thames).

Tilburyness, Broadness, Stoneness, Crayfordness, Cold Harbour Point, Jenningtree Point, Halfway House Point, or Crossness, Margaretness, or Tripcock Point, Bull Point or Gallionsness, Hookness, and Blackwall Point (*e*), wait (*f*) until any other vessels rounding the point with the tide have passed clear (*g*).

48. Steam vessels and steam launches crossing (*h*) from one side of the river towards the other side, shall keep out of the way of vessels navigating up and down the river.

49. Every steam vessel and steam launch, when approaching another vessel so as to involve risk of collision, shall slacken her speed, and shall stop and reverse, if necessary.

50. Steam vessels and steam launches navigating against the stream above Richmond Lock shall ease and, if necessary, stop to allow vessels coming down with the stream to pass clear, particularly when rounding points or sharp bends in the river.

51. Steam launches navigating above Richmond Lock shall, where the channel or depth of water permits, be navigated in mid-river.

52. Every vessel overtaking another vessel shall keep out of the way of the overtaken vessel, which latter vessel shall keep her course.

to go round, would, if nothing were in the way, have to use its steerage power for the purpose of continuing in a proper course, and it ends where the necessity for using that power ceases." See also *The Dringdean Grange*, (1902) P. 208.

(*e*) The rule does not apply (*semble*) to a vessel bound down, so soon as she comes out of the South-West India Dock. The entrance of the dock is above the place at which the rule begins to apply. See *per* Lord Blackburn, *The Margaret*, 9 A. C. 873, 880.

(*f*) This does not mean that she is to wait in the slack water or eddy under the point. "I think the meaning of that is, that she shall so far check her speed as to prevent her coming up to the point at the same time when the other vessel would come there." *Per* Brett, L. J., *The Libra*, 6 P. D. 139, 145; and see *The Margaret*, 9 P. D. 47, 50; and see *per* Lord Watson, 9 A. C. 885.

(*g*) Whether this means clear of the point, or clear of each other, is doubtful. See *per* Brett, L. J., and *per* Cotton, L. J., *The Libra*, *ubi supra*.

(*h*) In *The Schwan*, 6 Asp. M. C. 408, this rule (r. 24 of 1880) was held to apply to a vessel which, having been at anchor with her head down the river, was turning, with her head athwart the tide, for the purpose of going up the river on the flood. In *The River Derwent*, 6 Asp. M. C. 647, affirmed 7 Asp. M. C. 37, it was held that a vessel bound up the river on a flood tide, on the south side of mid-channel, and turning across the river, with her anchor dredging, for the purpose of getting her head on tide, did not cease to be "crossing" so long as she was moving towards the north shore. Lindley and Lopes, L. JJ., thought that the rule ceases to apply after the ship has got across the river so far as she can go in safety, although she is still angling across the stream; Lord Esher, M. R., expressed a contrary opinion. The rule does not apply to a steamship turning round in the river, although in process of turning part of her length may cross the line of mid-channel. *The John Holloway*, (1900) P. 37.

When r. 48 (r. 24 of 1880) applies, r. 53 (r. 25 of 1880) applies to vessels proceeding up or down the river and approaching her. *The Schwann*, *The River Derwent*, *ubi supra*; *The New Pelton*, (1891) P. 258, as to altering for third ship.

Every vessel coming up with another vessel from any direction more than two points abaft her beam, *i.e.*, in such a position, with reference to the vessel which she is overtaking, that, at night, she would be unable to see either of that vessel's side lights, shall be deemed to be an overtaking vessel, and no subsequent alteration of the bearing between the two vessels shall relieve the overtaking vessel of the duty of keeping clear of the overtaken vessel until she is finally past and clear. Local rules (Thames).

As by day the overtaking vessel cannot always know with certainty whether she is forward or abaft this direction, she shall, if in doubt, assume she is an overtaking vessel and keep out of the way.

53. Where, by the above bye-laws, one of two vessels is to keep out of the way, the other shall keep her course (*i*) and speed (*j*).

Lights required above Teddington Lock.

54. Every steam vessel and steam launch shall, when navigating in or above Teddington Lock, carry and exhibit the following lights and no other, that is to say:—

(a) On or before the foremast, or, if there be no foremast, on the funnel, or on a staff at the bow, in either case, at a height above the hull of not less than four feet, a bright white light, so fixed as to throw the light ten points on each side of the vessel, viz., from right ahead to two points abaft the beam on either side, which light shall, in the case of a steam launch registered under the provisions of the Thames Conservancy Act, 1894, be behind a glass shade or slide, upon which the registered number of such steam launch shall be legibly and conspicuously painted in black figures, and in the case of any other vessel the glass shall be perfectly plain and clear.

(b) On the starboard side a green light so fixed as to throw the light from right ahead to two points abaft the beam.

(c) On the port side a red light so fixed as to throw the light from right ahead to two points abaft the beam.

(d) Every such light shall be of such a character as to be visible at a distance of at least one mile.

(*i*) In *The Skerryvore*, Ad. Div. 19th Aug. 1886, Sir J. Hannen said that "keep her course" did not mean, in the case of a vessel rounding a point, that she was necessarily to keep at the same distance from either shore. If there were a "clear eye" elsewhere, she was at liberty to approach either shore to avail herself of it. See also, as to this rule, *The Schwan*, 6 Asp. M. C. 409; and *The River Derwent*, 7 Asp. M. C. 37.

(*j*) It is difficult to reconcile this with r. 49.

Local rules (Thames).

55. The master of the vessel shall be responsible for the due carrying and exhibiting of such lights and no other.

(*Articles 56 to 98 relate to the navigation and conservancy, chiefly Teddington.*)

Regulations as to Watermen, Lighters, Tugs, &c.

Thames; watermen.

By sect. 80 of 22 & 23 Vict. c. 133 (Local), amended by 27 & 28 Vict. c. 113, the master, wardens, and assistants of the Company of Watermen and Lightermen of the River Thames are empowered, subject to the approval of the Thames Conservators, to make bye-laws "for carrying into effect the purposes of the Act," including, *inter alia*, the making of "proper regulations for the navigation of barges, lighters, boats, and other like craft . . . for the security of passengers . . . and for the orderly conduct of traffic." Bye-laws have been made under the above Acts, some of which have to be construed with reference to the Thames Rules. The following are cases upon the Watermen's Act bye-laws:—*Perkins* v. *Gingell*, 50 J. P. 277; *Rolles* v. *Newell*, 25 Q. B. D. 335; *Elmore* v. *Hunter*, 3 C. P. D. 116; *Goldsmith* v. *Slattery*, 63 L. T. 273; *Duckham* v. *Gibbs*, (1900) 1 Q. B. 394.

TYNE.

Tyne.

The River Tyne bye-laws of 15th November, 1884, are made under the River Tyne Improvement Acts, and the Acts incorporated therewith. (See the Tyne Improvement Acts of 1850, 1852, 1857, 1859, 1861, 1865, and 1877; the Harbours, Docks, and Piers Clauses Act, 1847.) They provide for (5) the mooring of vessels under the harbour-master's orders; anchors not to be let go; (6) dismantling; (7) anchors to be on deck or hung from hawse-pipe; (9) one vessel only to lie at a staith; (10) vessels not to lie between tiers; (11) steamers moored not to move engines. The rule as to steamships' lights (12) is the same as Art. 3 of the Sea Regulations, except as to steamships without foremast, which may carry the masthead light on a staff, as in the Tees Rules (*supra*, p. 528); (13) steamships towing to carry a second light on the foremast or staff; (14) steamships and sailing ships being towed and steamships under sail to carry side lights only; (15) stern light to be shown to overtaking ship; (16) vessels at anchor, outside vessel of tier, and any other vessel so ordered by harbour-master, to show riding light; rafts and open boats to show either red and green side lights, or lantern with red and green slide.

---

18. Every steam vessel shall be provided with a steam whistle or other efficient steam sound signal, so placed that the sound may not be intercepted by any obstructions, and with an efficient fog-horn, and with an efficient bell. Every sailing vessel shall be provided with a similar fog-horn and bell.

In fog, mist, or falling snow, whether by day or night, the following signals shall be used:—

(a) Upon a steam vessel under way a prolonged blast shall be made with the steam whistle or other steam sound signal, at intervals of not more than two minutes.

(b) Upon a sailing vessel under way a like blast shall be made with the fog-horn at intervals of not more than two minutes.

(c) Upon a steam vessel and a sailing vessel, if and when anchored, the bell shall be rung at intervals of not more than two minutes (*k*). Local rules (Tyne).

As to Navigation.

19. Every vessel under way shall, when proceeding seaward, be kept to the south of mid-channel, and when proceeding inward from sea or up the river, to the north of mid-channel, and so that in either case such vessel shall, with a port helm, always be and be kept clear of any vessel proceeding in the opposite direction.

20. Every steam or other vessel (whether towing any other vessel or not, or being towed) shall, unless prevented by stress of weather, be brought into port to the north of mid-channel, and be taken out of port to the south of mid-channel (*l*), (*m*).

21. Every vessel when under way, and requiring to pass over a part of the channel which is not within that half reserved for its navigation, for the purpose of proceeding to or from any landing, mooring, or other place, shall be navigated so as to cause no obstruction, injury, or damage to any other vessel; and every vessel continuing its navigation, after reaching such landing or mooring, or other place, shall be navigated as soon as practicable to the side of the river specified as the proper side for its navigation, and so as to cause no obstruction, injury, or damage to any other vessel.

22. Every vessel crossing the river, and every vessel turning, shall be navigated so as not to cause obstruction, injury, or damage to any other vessel (*m*).

23. When steam vessels proceeding in opposite directions are approaching each other they shall be kept on their proper sides, and, if necessary, speed shall be slackened, the vessel

(*k*) A tug moored to a pontoon at the Fish Quay was held not to be at fault for not ringing her bell in a fog as she was not at anchor within this rule. *The Titan; The Rambler*, 10 Asp. M. C. 350.

(*l*) This means that a vessel coming in from sea must not cross "so near as not to leave room for vessels going out of the river, and, if she is coming from the southward, before she turns in, she must leave a fairway for all vessels going out of the port." *The John of Scott*, (1897) P. 68; *The Harrest*, 11 P. D. 14.

(*m*) These rules do not make a crossing vessel liable, whatever the circumstances may be, if she comes in contact with another vessel which is on the side of the river prescribed for her navigation. A vessel may legitimately cross the river whenever it is reasonably safe to do so, and it is the duty of other vessels proceeding up or down the river to use the ordinary precautions for avoiding collision with her. *The Thetford*, 6 Asp. M. C. 179; and see *The Henry Morton*, 2 Asp. M. C. 477, *supra*, p. 490. See also *The Skipsea*, (1905) P. 32, *per* Gorell Barnes, J., at p. 37. "It is a kind of give and take; but I do not think I am going too far in saying that the weight of the operation at the outset is principally upon the vessel crossing in this sense, that she must see whether she has room to cross, and, if she has room, she may cross."

Local rules (Tyne).

going against the tide in all cases giving way to the one going with the tide; and when steam vessels are approaching each other so as to involve risk of collision, their helms shall be put to port, and, if necessary, their engines shall be stopped or reversed.

24. When any steam vessel (except a steam vessel when towing sailing vessels) is approaching any sailing vessel or steam tug with sailing vessels in tow proceeding in the opposite direction, the speed of such steam vessel shall, if necessary, be slackened when it is within thirty yards of and until it shall have passed the sailing vessel or steam tug and towed vessels.

25. Sea-going steam vessels shall not be navigated in the port above the Low Lighthouse at a greater speed over the ground than six knots or seven statute miles per hour, whether going with or against the tide.

26. (*Vessels not to cause risk of collision.*)

27. (*Steamship unable to keep out of the way of sailing ship to sound four blasts of two seconds' duration; then sailing ship to keep out of way.*)

28. Every sailing or steam vessel overtaking any other vessel shall be kept out of the way of the overtaken vessel, which shall be kept on her course, and no obstruction shall be wilfully caused by the overtaken vessel to the passage of the overtaking vessel; and any vessel having passed another shall not cross the bows of the passed vessel until at such a distance as will not necessitate the stopping or easing of the passed vessel to avoid collision.

30. (*Scope of tow-line, except to eastward of Low Lighthouse, North Shields, not to exceed twenty fathoms.*)

31. (*Not more than one vessel exceeding* 200 *tons to be towed by same tug.*)

32. (*Length of train of vessels in tow not to exceed* 450 *feet from stern of tug; vessels not to be towed abreast; rafts not to exceed* 250 *feet by* 40 *feet.*)

33. (*Not more than six keels, wherries, or boats to be towed at once.*)

34. (*Two tugs towing same vessel not to be more than* 100 *feet apart, or, if towing abreast, more than forty feet.*)

35. (*Vessels not to drift; off dock entrances vessels waiting admission to keep out of fairway.*)

37. (*Vessels to have anchor ready to let go.*)

39. Every vessel under way when overtaken by a fog shall be navigated at a very moderate speed, and shall, as soon as practicable, be moored or anchored out of the navigable channel. Vessels shall not, without the permission of the harbour master, be got under way during a fog.

40. (*Engines to go dead slow* 100 *yards before reaching, and fifty yards after passing, diving and other craft of the Commissioners.*) Local rules (Tyne).

41. (*And within* 100 *yards of wreck-removing craft.*)

42. (*A red flag or red light to be shown on dredgers on side where chains are taut. Vessels to pass on other side.*)

43. (*Also where no passage between dredger and shore.*)

44. (*Vessels not to moor at Commissioners' white buoys.*)

47. (*Tug to attend vessel in tow till moored.*)

48. (*Engines not to move within fifty yards of boat coming alongside.*)

APPENDIX III.

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW IN REGARD TO COLLISIONS.

TRANSLATION OF THE DRAFT CONVENTION.

Annexed to the Protocol of October 5th, 1909.

Art. 1. Where a collision occurs between sea-going ships or between sea-going ships and vessels of interior navigation, the question of making good the damages caused to the ships or to any things or persons on board the ships is subject to the following provisions in whatever waters the collision takes place.

Art. 2. If the collision is accidental, if it is caused by *force majeure*, or if there is doubt as to the causes of the collision, the damages are borne by those who have suffered them.

This provision is applicable notwithstanding the fact that the vessels, or either of them, are at anchor at the time of the casualty.

Art. 3. If the collision is caused by the fault of one of the vessels, liability to make good the damage attaches to the one who has caused it.

Art. 4. If two or more vessels are in fault the liability of each vessel is in proportion to the degree of the faults respectively committed. Provided that if, having regard to the circumstances, it is not possible to establish the degree of the respective faults, or if it appears that the faults are equivalent, the liability is distributed equally.

The damages caused, whether to the vessels or to their cargoes or to the effects or other property of the crews, passengers, or other persons on board, are borne by the vessels in the said proportion, but the vessels are not jointly liable towards third parties.

The vessels in fault are jointly liable towards third parties in respect of damages for death or personal injury, but a vessel which has contributed a share of the damage greater than that which under the first paragraph of this article it

ought strictly to bear as a right over in respect of its overpaid proportion.

It is left to law of each country to determine, as regards such right over, the bearing and effects of any contract or provision of law which limits the liability of the owners of a vessel towards persons on board.

Art. 5. The liability established by the preceding Articles attaches in cases where the collision is caused by the fault of a pilot, even when the pilot is carried by compulsion of law.

Art. 6. The bringing of an action for the recovery of damages resulting from a collision is not subject either to a protest or to any other special formality.

All statutory presumptions of fault in cases where liability for collision is concerned are abolished.

Art. 7. Actions for the recovery of damages are barred by prescription after an interval of two years from the date of the casualty.

The period within which an action must be instituted for the recovery of an overpaid proportion under paragraph 3 of Article 4 is one year running from the date of payment.

The grounds for suspending or interrupting the said periods of prescription are such as may be provided by the law of the Court trying the case.

The High Contracting Parties reserve to themselves the right to provide by legislation in their respective countries that the said periods shall be extended in cases where it has not been possible to arrest the defendant vessel in the territorial waters of the State in which the plaintiff has his domicile or his principal place of business.

Art. 8. After a collision the master of each of the vessels in collision is bound, so far as he can do so without serious danger to his vessel, its crew and its passengers, to render assistance to the other vessel, its crew and its passengers.

He is likewise bound, so far as possible, to make known the name of his vessel and the port to which it belongs, and also the names of the ports from which it comes, and to which it is bound.

A breach of the above provisions does not of itself impose any liability on the owner of a vessel.

Art. 9. The High Contracting Parties whose legislation does not forbid infringements of the preceding Article bind themselves to take or to propose to their respective legislatures the steps necessary for the prevention of such infringements.

The High Contracting Parties will communicate to one another as soon as possible, the laws or regulations which have already been or may be hereafter promulgated in their States for giving effect to the above undertaking.

Art. 10. Apart from any Conventions which may subsequently be made, the provisions of this Convention do not

affect in any way the nature or extent of the liability of shipowners as regulated by the laws of each country, nor do they affect the legal obligations arising from contracts of carriage or from any other contracts.

Art. 11. This Convention does not apply to ships of war, nor to Government ships appropriated exclusively to a public service.

Art. 12. The provisions of this Convention will be applied as regards all persons interested when all the vessels concerned in any action belonging to contracting States, and in any other cases for which the national laws may provide:

Provided always that—

1. As regards persons interested who belong to a non-contracting State the application of the above provisions may be made conditional upon reciprocity.
2. Where all the persons interested belong to the same State as the Court trying the case the provisions of the national law, and not of the Convention, are applicable.

Art. 13. The provisions of this Convention are applicable not only in the case of a collision, but also in all cases where any act or omission of navigation or any failure to observe the regulations has resulted in damage being caused by a vessel to another vessel, or to any things or persons on board of either vessel.

Art. 14. The delegates of the High Contracting Parties will re-assemble at Brussels three years after this Convention comes into force with the object of trying to find amendments which could be introduced, and especially of extending, if possible, the sphere of application.

Art. 15. States which have not signed this Convention are allowed to adhere to it on request. Such adhesion shall be notified through the diplomatic channel to the Belgian Government, and by that Government to each of the other Governments; it shall become effective one month after the sending of the notification by the Belgian Government.

Art. 16. This Convention shall be ratified, and the ratifications shall be deposited in Brussels as soon as possible. After an interval of one year from the day when the Convention is signed the Belgian Government shall place itself in communication with the Governments of the High Contracting Parties which have declared themselves prepared to ratify it, with a view to deciding whether there is occasion for putting it into force.

The ratifications shall, in that case, be deposited at once, and the Convention shall enter into force a month afterwards.

The protocol shall remain open another year in favour of the

States represented at the Brussels Conference. After this interval they can only adhere to it on conforming with provisions of Article 15.

Art. 17. In the case of one or other of the High Contracting Parties denouncing the Convention, such denunciation shall not take effect until a year after the day on which it has been notified to the Belgian Government, and the Convention shall remain in force as between the other Contracting Governments.

In witness whereof, the Plenipotentiaries of the several States have signed this Convention, and have affixed their seals thereto.

INDEX.

Abandonment,
liability of owners after, 87.
by crew, of ship injured in collision, 104.
by owner, of ship sunk in collision, 107 *seq.*
after collision, 104, 105.

Abroad, collision, 200, 203.

Accident. See *Inevitable Accident.*

Action,
in rem, 73.
in personam, cannot be tacked to action *in rem*, 297.
in personam, bar to action *in rem*, 213.
against pilot, 62, 295.
successive actions by sufferers in collision, 78, 97, 301.
against owners resident abroad, 201.
stay of, where action pending elsewhere, 211.
where both ships are foreign, 199.
cargo action usually postponed to ship action, 294.
in rem, where judgment *in personam* unsatisfied, 296.
in rem, where damage but no collision, 76.
in rem, does not lie under Lord Campbell's Act, 114, 132, 211.
for damage to cargo, against carrying ship, 76.
in rem, against a public authority, 296.
for limitation of liability, 299. See *Limitation, &c., Action for.*
consecutive collisions, 160.
separate actions for damage to property and person, 295.

Admiralty Jurisdiction,
limits of, 199, 303.
damage to property ashore, 78, 304.
for loss of life, 114.
wrong-doer can be sued personally, 62, 67. See *Wrong-doer.*
damage to cargo, 266 *seq.*
no damage lien for, 76.
where there is damage but no collision, 76.
as between tug and tow, 197.

Admiralty Jurisdiction—*continued.*
where both ships foreign, 199.
of High Court, 303.
of County Courts, 304.
American law, 77.

Adrift, damage by craft sent, 65, 82.

Alteration of Course,
in fog, 327, 380.
causing risk, 28, 327.
for greater safety, 328.
"alter her course to starboard," (or port,) explained, 396.

America, Law of,
cargo-owners' remedy where both ships in fault, 131, 268.
infringement of the regulations, 60.
liability in case of compulsory pilotage, 241.
liability of ship for negligence of those on board, 86.
as to tug and tow, 180.
as to division of loss, 109, 131, 192.
as to Admiralty jurisdiction, 77.

Anchor,
damage by an unbuoyed, 89.
damage by anchor a-cock-bill, 13, 18.
ship dredging with her anchor, 340, 384, 398.
letting go, to avoid collision, 4, 10, 12.
slipping, to avoid collision, 27.
slipped anchor, damages, 27.
stowing, in dock, 496.
letting go, when compulsory pilot in charge, 230, 232.
coming to an anchor, duty of ship, 479.
anchor watch, 472.
riding to a single anchor with other craft to leeward, 479.
insufficient ground tackle or moorings, 93, 228, 481.

Anchor, Ship at,
meaning of term, 334, 340, 362.
burden of proof where one ship is, 7, 30.
collision with, 30.
with ship fast to moorings, 13.
giving a foul berth to, 477—479.
duty to keep clear of, 30.
in an improper place, 30, 477, 482, 484.
in the track of ferry boat, 385.
on fishing grounds, 480, 489.
fishing boats fast to their nets, 489.
insufficient moorings, 9, 93, 481.
insufficient ground tackle, 228, 481.
precautions to be observed in coming to an anchor, 479.
making fast to another ship, 483, 486.
shifting berth, 482, 483.

Anchor, Ship at– *continued.*
duty of, to make snug, 480.
sheering about, 363, 481.
parting of cable or moorings, 93.
both ships dragging, 22, 481.
fog signal for, 367.
slipping, to avoid collision, 27, 485.
sheering, or giving chain, to avoid collision, 33, 481.
pilot's duty, as to bringing up, 230.
riding lights, Art. 11..361.
for fishermen, Art 9..355.
Art. 4 does not apply to, 346.

Appeal,
costs of, 310—312.
from registrar, costs of, 310.
upon question of seamanship, 293.

Approaching other Craft, 329, 493.
indications of risk, 324.
close shaving, 330.
speed, 432.

Aquilian Law, shipowners' liability by, 63.

Arrest. See *Proceedings in rem.*
usually avoided by giving bail, 73.
of cargo to compel payment of freight, 75.
of foreign ship that has injured British property, 201.
ship in charge of compulsory pilot, not liable to arrest for his fault, 217.
of wrong ship, 298, 306.
without reasonable cause, 299.
of ship, to compel owners to appear, 149.
of ship of foreign sovereign, 209.
of ship other than the wrong-doer, 74, n.
of mail ships, 210.
its connection with limitation of liability, 149.
ship when arrested is security for costs, 73.

Ashore,
collision with ship ashore, 25, 87.
tug working at ship ashore, 492.
ship putting herself ashore, to avoid collision, 27.
taking the ground alongside ship, 479.
ship ashore doing damage as she comes off, 25, 194.
negligence of persons ashore causing collision, 159, 162.
duty to light a ship ashore in a fairway, Art. 11..361.
a ship sunk or ashore, 87—89.

Assessors,
power to order inspection by, 291.
advise Court upon questions of seamanship, 292.
take no part in the judgment of the Court, 292.
appeal upon matter of pure seamanship, 293.

Astern, duty to warn ship, 491.

At Anchor. See *Anchor, Ship at.*

Average Contribution,
collision does not give rise to, 279, 283.
recoverable as damages, 113.
division of loss, formerly a form of average, 119, 137.

Bail,
usually given to avoid arrest, 73.
whether damage lien discharged by, 79, 80.
insufficient, 80.
foreign sovereign suing in British Court, 210.
cost of bail in salvage action recoverable, 110.
costs of bail, 80, 312.
judgment for amount in excess of, 80, 296.
failure to put in, after undertaking, 298.
arrest after undertaking to give bail, 299.

Bailees of ship or cargo, may recover for collision, 97.

Bankruptcy,
of owner of wrong-doing ship, 74, 79, 81.
of plaintiff, costs of repairs recoverable, 101.

Barge,
driving with the tide, 10, 13, 497.
damage by barge in charge of licensed waterman, 219.
whether damage lien attaches to, 78.
cargo on barge in tow, 266.
whether negligence to leave unattended, 476.

Barratry,
infringement of the regulations is not, 269.
collision by negligence is not, within bill of lading, 269.

Beaching after collision, 106.

Beacon, damage by stump of, 88.

Beating out Tacks, duty of ship as to, 416, 488.

Belgium, law of, as to compulsory pilotage, 207, 218.

Bell,
ship at anchor in a fog to use, Art. 15..367.
Turkish ships do not use, 367.

Berth,
foul, 478, 481, 482.
taking up, in dock, 479, 484.
keeping a berth with a buoy, 483.
where duty to keep in proper condition, 90.

Bill of Lading,
meaning of exception of collision in, 266.
effect of other exceptions, 267.
collision by negligence is not barratry within, 269.

Blind Corner, rounding, 23, 497.

Board of Trade,
instructions to surveyors as to lights, 341.
opinion of, as to master's and pilot's responsibility, 240.
practice in regard to supplying depositions, 290.

Boat,
collision with, duty to stand by, 59.
fishing boats' lights, Art. 9..353. See *Fishing Boats.*
hand lights for, Art. 7..350.
application of regulations to, 319, 500.

Bond to Stop Arrest,
recovery by surety against co-owners, 302.
liability of master on, 302.

Bottomry Bondholder on freight, his right when liability limited, 166.

Bringing up,
precautions to be observed before, 478 *seq.*
foul berth, 478, 480, 482.
in improper place, 484.
shortening sail before, 480.
pilot's duty with reference to, 230.

Buoys,
system of buoyage, 449.
vessel entitled to treat conical, as starboard hand, 449.

Burden of Proof,
collision with ship at anchor, 30.
ship neglecting to keep her course, 34, 405 *seq.*
of negligence, 29 *seq.*
failing to stop and reverse before collision, 431.
where compulsory pilot in charge, 224.
sailing ship in flat calm, 416.
as to necessity of departing from the regulations, 462.
as between the ship required to keep her course and the other, 34.
where defendants admit fault, 29.
in practice with plaintiff to prove ship sank in consequence of collision, 103.
where qualified pilot is not obtainable, 226.

Cable,
jamming of, on windlass, 9, 232.
insufficiency of, 228, 481.
parting of, 9, 25, 33, 93.

Campbell's Act, Lord,
damages under, 114.
no action *in rem* under, 114, 133, 210, 297.
actions *in personam* may be brought in Admiralty Division, 211.
rule as to division of loss does not apply, 133.
application to foreigners and foreign ships, 210.
claims under, limitation of liability, 161, 165.
assessment of damages by jury, 302.

Canada, Law of,
division of loss, 122.
infringement of regulations, 42.

Care,
absence of ordinary care is negligence, 2.
in management of dangerous business, 36, 68.
what is ordinary, 2.

Cargo,
damage lien does not attach to, 75.
damage to, by carrying ship, no lien, 76, 271.
may be arrested to compel payment of freight, 75.
liability to arrest not affected by Act limiting liability, 164.
transhipment, after collision, 159.

Cargo Owner. See *Carrier; Bill of Lading.*
not liable for collision, 94.
early law as to liability of cargo owner, 74, n.
recovery by, where both ships in fault, 95.
recovery by, against carrier, damages, 115.
action by, usually postponed to claim by ship, 294.
when collision is between ships of same owner, 95, 267.
his right to costs, 307.
shipowner's liability as carrier, 265 *seq.*
cargo on board barge in tow, 266.
effect of bill of lading as to collision, 266.
how affected by rule as to division of loss, 131, 268.
his rights where the carrier is a railway company, 164, 270.
liability of master, 270.
Admiralty jurisdiction in case of damage to cargo, 76, 270.
no average contribution from, in case of cargo sunk by carrier's fault and afterwards raised, 279.
action for damage to cargo, 76, 97.
no lien for damage to cargo, 76, 271.
limitation action, issue whether one or both ships in fault, 300.

Carrier,
shipowner's liability as, 265 *seq.*
whether shipowner is a common, 265.
shipowner's liability at common law, 265.
tug-owner's liability for goods in tow, 266.
shipowner's liability on the contract of carriage, 131, 163, 266.
bill of lading, what exceptions cover collision, 266.
collision by fault of carrying ship, 267.
the other ship, 266.
collision with other ship of same owners, 267.
how the rule as to division of loss applies to, 131, 268.
collision by negligence, not barratry, 269.
"perils of the sea," meaning of the exception of, 266, 269.
railway company carrying by sea, 164, 269.
liability of master, 270.
Admiralty jurisdiction in case of damage to cargo, 76, 270.
no average contribution in respect of cargo sunk by carrier's fault and afterwards raised, 279.
entitled to limited liability in contract as well as tort, 160.
liability of, when carrying in ship of other owner, 164.
damage to, by carrying ship, no lien, 76, 271.
damages recoverable against, 115.

Certificates, Officers',
may be cancelled for collision, 281.

Chartered Ship,
liability for damage by, 66, 68, 81.
damage lien attaches to, 81.

Charterer,
liability of, for collision, 69, 175.
whether entitled to limit his liability, 157.
shipowner's liability to, for collision, 270.

Charter-party, loss of, recoverable as damages, 112.

Civil Law, shipowner's liability, 63.

Close-hauled, Ship,
meaning of the term, 390.
on port or starboard tack, duty of, Art. 17..385.
whether ship hove-to is, 390, 391.
should luff, rather than bear up, 466.

Close Shaving, 324, 330, 487, 493.
suction, effect of, 493.

Clyde,
local rules of navigation in, 519.
pilotage in, 249.
collision in, 318.

Collision,
abroad, 200, 203.
in body of a county, 199, 200.
in foreign inland waters, 200.
in a dock, 200.
both ships in fault. See *Division of Loss.*
without fault in either ship. See *Inevitable Accident.*
four cases of, Lord Stowell's dictum, 117.
maritime lien for damage. See *Lien, Damage.*
civil law as to liability for, 63.
ships of the same owner, 95, 130, 267.
limitation of shipowner's liability for. See *Limitation of Liability.*
with reference to insurance. See *Insurance.*
with reference to contract of carriage. See *Carrier; Cargo Owner.*
does not give rise to average contribution, 279, 283.
with pier in a foreign country, 204.
common law jurisdiction for collision on high seas, 200, 202.
liability by maritime law, 86.
actions for, are *communis juri*, 199.
with tug or tow. See *Tug and Tow.*
with a King's ship, 94, 458 *seq.*
with lightship, 115, 164.
with dredger, wear, house, bridge, breakwater, or wharf, 77.
with trawl warp or tow line, 194, 358 (*The Warwick*).
with raft, 36.
with ship ashore, 25, 88.
with ship lying dead, 30.
with ship of foreign sovereign, 209, 210.
with ship at anchor. See *Anchor, Ship at.*
with ship at a wharf, 33.
with salvor, 11, 12, 65, 281.
with barge driving with the tide, 10, 13, 497.
with two ships at once, 27, 160, 173.
with a ship being launched, 159, 162.
between foreign ships, 199. See *Foreign Ships.*
infringement of the Regulations. See *Presumption of Fault.*
what is the cause of action, 12, 13.
negligence causing collision, 12. And see *Negligence.*
negligence of injured ship after, 103 *seq.*
caused by a previous collision, 25, 160.
where more than two ships involved, 27, 160.
between two ships caused by negligence of a third, 12, 26.
two ships liable for damage to a third, 15.
causing loss of life. See *Loss of Life.*
meaning of exception of, in a bill of lading, 266.
what damages may be recovered. See *Damages.*
liability for. See *Liability.*
wilful, 15, 28, 65, 84.
criminal liability for, 279 *seq.*
in a fog. See *Fog.*

Collision—*continued.*
application of foreign law to. See *Foreign Law.*
risk of, what is. See *Risk of Collision.*
incidental rights and liabilities arising out of, 279 *seq.*
salvage services after, or to prevent collision, 281. See *Salvage.*

Command,
whether master or pilot has. See *Compulsory Pilot.*
whether tug or tow has. See *Tug and Tow.*
ship not under, lights and signals for, Art. 4..344.
when a vessel is not under command, 345 *seq.*
whether duty to keep out of way of vessel not under command, 346.
vessel dragging through mud is under command, 345.
divided command, danger of, 171, 174, 229.

Common Employment,
doctrine of, does not apply as between tug and tow, 195.
compulsory pilot is not fellow servant of crew, 99.
whether master fellow servant of crew, 99.
as between transports in Government service, 67.

Common Law,
early actions at, for collision, 2.
jurisdiction, collision at sea, 198 *seq.*
collision abroad, 200, 203.
liability of shipowners by, 63 *seq.* See *Liability.*
action at, after proceedings in Admiralty, 293, 295.
unlimited liability of shipowner at, 146.
shipowner not liable for fault of compulsory pilot, 214 *seq.*

Company, Limited Liability,
damage by ship of, in liquidation, 79.
"single-ship" company, damage by ship of, 165.

Compulsory Pilot,
meaning of "compulsory," 214, 215.
compulsion by foreign law, 215, 217.
is not owner's servant, 214.
in owner's constant employment, 219.
owners not liable for fault of, 214, 215.
qualified pilot, who is, 225.
unqualified pilot employed where none qualified available, 225.
absence of qualified pilot must be proved, 226.
oversea pilotage licences, 258.
pilotage authority is not liable, 93, 215.
whether pilot of tow is "in charge of" the tug, 216.
effect of the statute, 216.
owner's exemption under 6 Geo. 4, c. 125..216.
,, ,, under 57 & 58 Vict. c. 60..216.
opinions as to justice, or otherwise, of exemption, 226.

Compulsory Pilot—*continued.*
ship exempt from arrest, for fault of, 217.
pilotage compulsory on foreign ships, 217.
abroad, pilotage compulsory, but pilot not in charge, 215, 217.
person "having the care of" ship, whether pilot is, 219.
pilotage in the Suez Canal, and elsewhere abroad, 217, 241.
for vessels passing to and from Manchester Ship Canal, 221.
damage to property of Thames Conservancy, 218.
damage to pier, or harbour works, 219.
owners liable for fault of Thames licensed waterman, 219.
,, pilot on board, but whose duty as pilot is at an end, 220.
where relation of master and servant has never arisen, 220.
ship "proceeding to sea" under the Liverpool Act, 221.
fault of compulsory pilot, division of loss, 86, 222.
,, ,, contributory negligence, 192, 222, 226, 227.
division of loss, 129, 222.
King's ships not subject to compulsory pilotage, 215.
owner liable for fault of master with pilotage certificate. 215.
pilotage certificate for masters and mates, 215, 246, 255, 258.
change of pilot, 221.
duty of master as to standing by, pilot in charge, 222.
owners liable for deficiency of ship or equipment, 228.
owner's exemption said to be an injustice, 226.
defence of compulsory pilotage, foreign ship, 206.
or where the collision is abroad, 204, 207.
pilotage compulsory beyond the three mile limit, 207.
ship under way in improper weather, whether pilot responsible, 229, 231, 236.
qualified pilot superseding unqualified pilot, 226.
negligence of owners immaterial where pilot could, with ordinary care, have avoided collision, 228.
contributory negligence of owner or crew, 223, 231.
divided command, danger of, 171, 174, 229.
duties of master and crew, 231.
duties of pilot, 229.
duty of pilot to insist on having charge, 235.
interference by master with pilot, 234, 235.
suggestion not interference, 236.
intoxication or incompetence of pilot, 234.
costs See *Costs.*
Court may call as witness, where neither side call him, 241.
pilot below at time of collision, 222, 232.
relative authority of master and pilot, in law, 229.
by the practice of seamen, 239.
proof of negligence on part of pilot, 222, 224.
proof of absence of negligence on part of crew, 224.

Compulsory Pilot—*continued.*
practice as to calling pilot to prove defence, 225, 290.
compulsory pilot in charge of tow. See *Tug and Tow.*
where and for what ships it exists, 242 *seq.*
general Acts as to, 242.
general exemptions from, 242, 245.
pilotage compulsory for all passenger ships, at home, 243, 257.
local Acts, as to, 247 *seq.*
London Trinity House, 253.
Sweden and Norway, ships from, to London, 256.
ships passing through pilotage district, 245, 257.
coasters, 244, 256, 257.
constant trader, 256, 257.
ship in her home port, 244, 245, 257.
Irish traders, 244.
"trading to," 17 & 18 Vict. c. 104, s. 379..257.
ship calling for orders, 246.
policy of Acts as to compulsory pilotage, 226, 246.
Germany, law of, 241.

Consolidation of Actions, 97.
of action *in personam* with action *in rem*, 293.
by different plaintiffs against same defendant, 293.
conduct in cross-actions, 293.

Construction,
of Act limiting liability, 151.
of the regulations,
generally, 320, 333.
"under way," 333, 340.
"making way through the water," 346.
"not under command," Art. 4..344, 405, 407.
"fishing with drift nets," Art. 9..357.
"when engaged in trawling," Art. 9..357.
"at anchor," Art. 11..362.
"aground," Art. 11..364.
"proceeding," Art. 20..404.
"course and speed," Art. 21..411.
"if necessary," Art. 23..418.
"fairway or mid-channel," Art. 25..364, 442.
"course," Art. 28..468.
"in sight," Art. 28..468.
"authorized or required," Art. 28..469.
of Thames rules, decisions as to, 531 *seq.*
of Tees rules, decision as to, 528 *seq.*

Contract,
limitation of liability in contract as well as in tort, 160.
of carriage. See *Carrier.*

Contractor, Independent, liability of ship for fault of, 81 *seq.*

Contribution. See *Average.*
none amongst wrong-doers, 95, 132.
amongst part-owners, for damages for collision, 95.

Contributory Negligence,
common law rule as to, 16 *seq.*
of shipowner or crew, compulsory pilot, 223, 231.
of compulsory pilot, brings into operation rule as to division of loss, 129, 222.
of compulsory pilot, whether owners affected by, 192, 222, 227.

Convenience no excuse for departure from regulations, 465.

Convoys, special rules as to lights for, Art. 13. .365.

Co-owners. See *Part-owners; Contribution.*

Costs,
general rule, 305.
liability for, beyond amount of statutory liability, 163.
both ships in fault, 305.
both ships in fault, compulsory pilot, 305, 307.
no fault in either ship, inevitable accident, 306.
arrest of wrong ship, 306.
violence of crew, costs refused, 307.
cargo-owner claiming ship sued alone in fault, 307.
owner of tow suing third ship, 307.
collision with H.M. ship, 307.
defence of compulsory pilotage, 308.
diversity of practice, 308.
in Court of Appeal, 311.
of appeal, where judgment below is varied, 311. 312.
of appeal, where both ships in fault, 310, 311.
of action for amount below County Court limit, 312.
of action for limitation of liability, 309, 312.
of reference to registrar, 309, 310.
of counter-claim, where defence of compulsory pilotage, 308.
of appeal from the registrar, 310.
of excessive bail, 312.
appeal from County Court, 312.
of paying freight into Court, 313.
of sureties on bail bond, 313.
of retaining seamen witnesses, 313.
of defending salvage action arising out of the collision, 110.
security for costs, 73, 311.
attendance of country solicitor, 313.
shorthand notes, 313.

Counter-claim,
judgment for balance, both ships in fault, 127, 128, 139.
costs, rule as to, where there is, 305.

County, collision in, 76, 303.

County Court,
cross actions, one in County Court, stay, 295.
Admiralty jurisdiction of, 304.
costs of appeal from, 312. And see *Costs*.

Course and Speed. See *Keep her Course and Speed*.

Crew,
sufficiency of, 476.
are *primâ facie* shipowner's servants, 62, 64.
common employment, doctrine of, 99.
whether crew of tug are agents of owner of tow, 174.
whether master liable for torts of, 62.
action by, for clothes lost in collision, 97.
duties of, when pilot on board, 231.
remedy of, where the other ship belongs to same owners, 95, 99.
costs of detaining, 110.

Criminal Liability,
for collision, 279, 280, 281.
infringement of regulations is misdemeanour, 280.
of master where pilot in charge, 280.

Crossing Ships,
what are, 329, 397, 400.
sailing ships crossing, Art. 17..385.
steamships crossing, Art. 19..400.
in a winding river, 401, 402, 443.
one may be an "overtaking" ship, 397.
rounding a buoy or headland, 403, 443.
where both about to pick up pilot, 403, 463.
crossing line of traffic, 495.
where one ship is leaving dock, 403.
crossing the bows of the other ship, Art. 22..418.

Custom,
conflicting with the Regulations is bad, 331.
customary track in river, 446.

Damage Lien. See *Lien, Damage; Proceedings in rem*.

Damage to Cargo. See *Cargo; Cargo Owner*.

Damage, Wilful, 15, 28, 31, 65, 84, 211.

Damages,
generally, 100 *seq*.
wrong-doer liable for reasonable consequences of his negligence, 100.
no difference between common law and Admiralty rules as to measure of, 101.

DAMAGES—*continued.*
costs of repairs, 101.
of dry-docking, 101.
though unpaid and plaintiff bankrupt, 101.
no deduction for new materials in place of old, 101.
loss after collision presumably caused by collision, 103.
diminished market value of ship sunk by collision, 110.
value of ship, if lost, how estimated, 101, 102.
interest on, 102.
interest added to amount of statutory liability, 102, 163.
interest where loss of freight recovered, 102, 109.
interest on freight, 109.
Admiralty practice as to interest in common law and transferred actions, 103.
loss of expected salvage, 109.
cost of rescuing crew of wrong-doing ship, 110.
salvage expenses incurred by reason of collision, 105, 106, 110.
demurrage, 111.
loss of use of ship, no money loss, 111, 112.
loss of market, 114.
loss of charter-party, 112, 113.
loss of fishing voyage, 113.
loss of fishing gear, 113.
paid to third ship, 126.
average charges, 104, 113.
anchor slipped to avoid collision, 27, 113, 477.
costs of defending salvage action caused by collision, 110.
cost of bail in salvage action, 110.
expense of compulsorily raising sunken ship, 107, 110.
expense of detaining crew, 110.
abandonment of injured ship after collision, 104—106.
where both ships in fault, 132. And see *Division of Loss.*
loss increased by negligence of plaintiff after collision, 106, 107.
raising ship sunk by collision, 107, 108.
not subject to claim for life salvage, 115.
beaching, after collision, 106, 107.
money paid to wreck-raising authority, 108.
plaintiff's negligence influences juries, amount of damages, 28.
contribution for, joint wrongdoers, 95, 132.
recoverable upon the contract of carriage. See *Carrier.*
recoverable, though paid by insurers, 115.
insurers may recover in name of sellers who have been paid, 97.
remoteness of, 14, 113.
loss increased by negligence after collision, 108.
consequential damages, 109.
machinery damaged, subsequent loss, 104.
loss of life, 114.
question of remoteness, for Court or registrar, 302.
in excess of *res* or bail, 296.

Danger of Navigation, whether danger of collision is, 49.

Dangerous in se, ship not, 36, 68.

Default,
of appearance, 81.
judgment, 304.

Demise of Ship,
liability for collision in case of, 66, 83 *seq.*, 157.
what is charter by demise, 157.

Demurrage,
recoverable as damages, 111.
amount of, allowed, 111.
actual loss must be proved except in case of non-trading bodies, 112.
recoverable by non-trading body, 111.
where two collisions make repairs necessary, 111.

Deodand, 71, 148.

Departure from the Regulations. See *Infringement, &c.*
language of Art. 27 compared with that of 57 & 58 Vict. c. 60, s. 419..450.
convenience no excuse for, 465.
burden of proof as to necessity, 413, 463.
disabled ship, 463.
trawler encumbered by trawl, 407, 463.
by ship required to keep her course, 413.
special circumstances rendering it necessary, 451, 462.
when justifiable, 425, 456.
regulations not to be applied so as to cause collision, 456.
dictated by one ship to the other by whistling or hailing, 5, 467.
where compliance is impossible, 461.
both ships must obey the regulations, 466.
ship not required to endanger herself, 462.
cases where departure not justified, 464.
where merchantman meets warships, 458.
whether departure from Art. 28 justified under Art. 27..466.

Depositions of officers and crew, evidence, 289, 290.

Disabled Ship, 8, 12, 25, 463.
signals and lights for, Art. 4..344.
by her own fault, 25.

Discontinuance, effect of, in limitation action, 301.

Distress Signals, Art. 31..505.

Division of Loss, The Rule as to,
generally, 117 *seq.*
Lord Stowell's dictum as to, 117, 143.
history of the rule in early codes, 118, 133 *seq.*
unequal division by some of the codes, 119, 135.
and in early English cases, 135.
by way of average contribution, 119, 120, 137.
peculiarity of English rule, 2.
its application to case of both ships in fault, 119, 120.
difficulty of proof a reason for the rule, 119, 137—139.
its principle, 119, 124.
policy of the rule, 120.
fanciful reasons for it, 120, 121.
its injustice in some cases, 121.
its history in English law, 119, 135.
its partial repeal for a period, 121.
formerly applied where neither ship in fault, 119, 135, 142.
and in case of inscrutable fault, 137, 139, 140.
whether these cases are still law, 145.
history of the rule since the Judicature Acts, 122 *seq.*
reasons for superseding the common law rule, 122.
whether negligence of both must be equal, 21—24.
its connection with common law rule of contributory negligence, 21 *seq.*
equal division the universal rule in England, 123.
applies to all collisions, and everywhere, 122.
applies to foreign ships, 122, 208.
whether *lex loci* or *lex fori*, 123.
its application where liability is limited, 127 *seq.*
where the fault is that of a compulsory pilot, 129, 222.
where collision is between ships of same owner, 130.
one ship not under way, 124.
collision caused by ship not herself in collision, 125, 192.
does not apply in action on contract of carriage, 130.
it gives and takes away a remedy, 130.
cargo owner recovers in tort half only of his loss, 115, 121, 131.
has been applied to claim of pilot in charge, 133.
applies where fault is presumed by law, 60, 132.
collision between tug or tow and third ship, 125, 185, 192.
or where the ships in collision are not themselves in fault, 125.
between tug and tow, both in fault for damage to either, 185. And see *Tug and Tow.*
where the negligence is by persons on shore, 125.
one tug injuring another towing same ship, 194.
negligence of one ship causing the collision, negligence of the other the loss, 124.
does not apply in case of joint wrongdoers, 132.
nor to claims under Lord Campbell's Act, 132.
or where with ordinary care the collision might have been avoided, 15 *seq.*, 133.

Division of Loss, The Rule as to—*continued.*
American law, 131—133, 189, 193.
colonial law, 122.

Dock,
coming out of, collision with ship, 403, 496.
collision in, 200.
refusing to move in, 491.
general rule for in-going vessel to give way, 497.

Dockmaster,
compulsorily in charge, 90.
liability of dock-owners for negligence of, 90 *seq.*, 239.

Dock-owners,
liability of, for collision, 90 *seq.*
duty to remove wreck, 90.
duty of, to light and buoy sunken ship, 82, 88, 89.
special limitation of liability, 153.

Dockyard Ports,
special rules for, 503.
infringement of rules for, 55.

Dredging,
ship dredging with her anchor, lights of, 340, 491.
lights for oyster-dredgers, 355.
in fog, 384, 491.

Drifter,
lights for drifters, Art. 9..353.
when "fishing with drift nets," 357

Dry-Dock, expense of, after collision, 101.

Dumb-Barge,
collision with, 10, 13.
under way in fog, 497.

Eddy Tide causing collision, 423, 492.

Electricity, regulations apply to ships propelled by machinery, 333.

Employment, Common. See *Common Employment.*

"End on, or nearly End on,"
meaning of term, Art. 18..395, 399.
duty of steamships meeting, Art. 18..395.
each ship a little on starboard bow of the other, 399.
rule does not apply to ship rounding a point, 399.
,, ,, in the Thames, 400.
,, ,, to sailing ships, 397.

Equipment. See *Ground Tackle; Steering Gear; Lights.*
collision caused by deficient, owner liable, 24, 36.
reversing gear clamped, 25.
collision caused by, is by "improper navigation," 161.
compulsory pilotage no defence where collision caused by deficient, 228, 232.
duty to provide mechanical fog-horn, 366, 370, 371.

Evidence. See *Burden of Proof.*
rules of, in Admiralty, 289.
official, ship's, and engineers' logs, 289.
in previous action, 290.
judgment in another action, 288.
foreign judgment, 213, 289.
result of inquiry under Merchant Shipping Acts, 289.
before other tribunals, 289.
protest, 289.
depositions, 289, 290.
coastguard and lighthouse logs, 290.
letter of master, 290.
statement by seamen and others, 290.
interrogatories, answers to, 291.
as to questions of seamanship, 292.
proof of the regulations, 291, 316.
fact of collision, whether evidence of negligence, 29.
of negligence, when compulsory pilot in charge, 222, 224.
as to what is Trinity outport pilotage district, 254.
as to calling compulsory pilot as witness, 225, 241, 291.

Fairway,
vessel brought up in, 31, 484.
meaning of term, 364, 442.

Fault, statutory presumption of. See *Presumption of Fault.*

Ferry Boat,
must not ply in dense fog, 384.
bringing up in the track of, 484.
American cases as to collisions with, 384, 484.

Fishermen's Lights. See *Fishing Boats; Lights, Ships'.*

Fishing Boats,
lights for, Art. 9..353.
fog-signals for, 355.
trawler at work, 354—356, 407, 463.
drift-net fishermen, 353.
line fishermen, 354.
sailing ship to keep out of the way of, Art. 26..450.
fishing grounds, care when passing through, 489.

Flare,
to attract attention, Art. 12..364.
for fishermen, 355, 358.
to be shown to overtaking ship, Art. 10..358.

Fog,
what is, within the regulations, 370.
application of steering and sailing rules in, 372.
when duty to stop and reverse under Art. 23..419.
speed in, Art. 16..372.
ferry boats not to ply in dense fog, 384.
vessel under way unnecessarily in, 236, 377, 384.
transmission of sound in, 35.
duty and speed of sailing ship in, 381.
duty of steamship in, Art. 16..372.
when position of other vessel is ascertained, 378 *seq.*
what is "navigating with caution," 380.
duty to stop, 378—380.
dredging with anchor, 384.
barge under way in, 497.
running to get out of fog, 377.
steamship lying dead in the water in, 383.
alteration of course in, 327, 380.
no inevitable accident, where speed excessive, 7, 8, 383.
ship's power of stopping is relevant in, 374.

Fog-signals,
Art. 15..366.
for ship at anchor, 367.
for vessels fishing, 355.
for steamship under way, 367.
for sailing ship on port or starboard tack, 367.
with wind aft, 367.
steamship stopped, 367.
small craft, 367.
ship towing, 367.
ship in tow, 367.
to be sounded when in neighbourhood of fog-bank, 370.
snow squalls, 370.
transmission of sound in fog, 35.
mechanical fog-horn must be used, 366, 370.
breaking down of, 51, 451.
Thames rules as to, 538.
ship fast to wharf or shore, 369.

Foreign Judgment. See *Judgment.*

Foreign Law. See *America; France, &c.*
when applicable, 198, 203.
in case of collision abroad, 203.
compulsory pilotage, liability of owners, 207, 217 *seq.*
local rules of navigation, 205, 501.
foreign judgment. See *Judgment.*

Foreign Ships,
law applicable to, 198 *seq.*
foreign owners, their liability. See *Liability; Owners.*
Admiralty jurisdiction in case of collision between, 199.
their right to sue in British Court, 199, 200.
arrest of, for injury to property of British subject, 201.
pilotage compulsory for foreign ships, 207, 217.
limitation of liability, 152, 154, 155. See *Limitation of Liability.*
division of loss, rule applies to, 122, 208.
tonnage of, for calculating liability, 152 *seq.*
defence of compulsory pilotage available for, 204, 206.
criminal liability for reckless navigation of, 280.
application of the regulations to, 320.
infringement of regulations by, 59, 205.
liable for not standing by, 59, 206.
have benefit of limitation of liability, 207.
British local rules of navigation bind, 205.
liability of, for negligence, 201, 203.
rule of the road for, 204.
statutory rules as to presumption of fault, 59, 205, 316.
ship of foreign sovereign, 209. See *Sovereign, Foreign.*
ships of war and public ships not liable to arrest, 209.
duty of, to assist other ship in collision, 205.
rule as to division of loss applies to, 122, 208.
Lord Campbell's Act, 210.

Foul Berth, 478, 481, 482.

France, Law of,
insurers' liability in case of collision, 272.
liability for negligence, 203.
compulsory pilotage, 218.

Free. See *Running Free.*

Freight,
damage lien attaches to, 75.
liability of cargo to arrest, for payment of, 75.
loss of, recoverable as damages, 102, 109.

Germany, Law of, non-liability for act of compulsory pilot, 241.

Getting under Way, 485.

Going about,
rule as to beating out tack, 416, 488.
sailing ship must not embarrass steamship by, 409.
care to be used before, 409, 486.
missing stays, 487.
duty to keep clear clear of ship in stays, 30, 486.
two ships on the same tack beating to windward, 438, 487.
ship in stays, 486, 488.

Government, Ship belonging to. See *Sovereign, Foreign.*
liability in case of damage by, 94.
not subject to arrest, 94, 209.
foreign public ship, damage by, 209.

Ground Tackle,
insufficiency of, 9, 93, 481.
compulsory pilotage no defence in case of deficient, 228.

Hailing, from the other ship, departing from regulations, 5.

Harbour Authority,
liability for fault of harbour master, 90, 235, 239.
unlicensed pilot employed by, 215.
duty of, to remove wrecks, 88, 90.
and to light and buoy sunken ship, 82, 88.
are to see berth in proper condition, 90.
liability for collision, 90, 239.
action against, limit of time, 93, 295.
special limitation of liability, 153.
may recover demurrage though not working for gain, 111.

Helm,
verbal orders to, anomalous character of, 396.
orders by hand, variety of practice, 396.
pilot liable for orders to, 230.
owner liable, for carrying out pilot's orders to, 232, 233.
action of, with propeller reversing, 433, 434.
rule of port helm. See *Port Helm.*
to be assisted by starting sheets and braces, 383, 471.
signals, Art. 28..467.
lashed, 414.

Holland, Law of, limitation of liability introduced from, 148.

Hove-to, Ship,
ship hove-to, must comply with steering rules, 390.
steamship hove-to, 404.
is under way, within meaning of the regulations, 345.
whether she is not under command within Art. 4..344, 390.
whether negligence to lie-to in track of ships, 391.
duty to get way on, where risk of collision, 392, 413.
how to "keep her course," 413.

Humber, local rules of navigation for, 521.

Ice,
where vessel hindered by, inevitable accident, 11.

Identification of Wrong-doing Ship, 298.

"Immediate Danger," departing from regulations to avoid, Art. 27..450.

"Improper Navigation,"
meaning of the term in statute limiting liability, 161.
damage by ship being launched is, 162.
collision by defective steering gear is by, 162.
injury by tug to tow is by, 162.

In rem. See *Proceedings in rem; Lien, Damage; Action.*

Independent Contractor,
liability of ship for fault of, 89 *seq.*
liability for negligence of, not raising sunken ship, 89.
doctrine does not apply in action *in rem*, 82.

Inevitable Accident,
meaning of the expression, 6.
act of God, *casus fortuitus*, 6.
burden of proving, 7.
instances of, 8.
American cases as to, 11.
ship disabled or unmanageable, 8.
defence of, cannot be sustained where speed excessive, 383.
craft driving with the tide, 10, 13, 497.
fault of one ship causing collision between others, 8.
cable or moorings parting, 9.
jamming of cable, 9.
steering gear giving way through latent defect, 9, 31, 162.
not letting go anchor in time, 9, 10.
ship driving over sand, 10.
dense fog, 10. See *Fog.*
violent storm, 9.
ice, 11.
combination of circumstances, 10.
whether rule of division of loss applies to, 142, 145.
costs in case of. See *Costs.*

Infringement of the Regulations. See *Presumption of Fault.*
history of law as to, 38 *seq.*
is a misdemeanor, 280.
presumption of fault arising from, 38 *seq.*
whether breach of Art. 27 is, 54, 458.
improper speed in thick weather, Art. 16..372.
not using mechanical fog-horn, 370.
improper lights, 42, 51, 335 *seq.*
breaking down of fog-horn, 51.
failure to indicate movements by whistle signals, 43.
breach of Art. 28 is infringement even where course not required by rules, 469.
mouth, instead of mechanical, fog-horn, 44, 370.
improper screens, 45.
local rules, what rules are within the penalty, 55.
regulation infringed must be material to the case, 45.

Infringement of the Regulations—*continued.*
what amounts to infringement, 46, 51.
reasonable compliance required, 51, 341.
there must be an opportunity of compliance, 46.
mere negligence, bad seamanship, 54, 462, 471.
failure to stop and reverse, 46 *seq.*; and see Art. 23.
whether there can be, where collision is inevitable, 52.
owners liable where ship deemed to be in fault, 60.
whether the sea regulations can be infringed in a river, 56.
infringement in the agony of collision, 3, 46 *seq.*, 53.
in consequence of previous negligence, 53.
whether tug liable for infringement by tow, 54.
foreign ships within the penalty, 59, 205.
infringement must be pleaded, 287.
American law, 60, n.

Injury to Person,
detention of foreign ship for, 201.
liability for, 97.

Inscrutable Fault,
whether loss divided in case of, 2, 119, 138 *seq.*

Inspection,
power of Admiralty Division to order, 291.
exercised, refused, 292, 343.

Insurance,
collision with reference to, 271 *seq.*
where collision is without fault in either ship, 271.
by fault of the other ship, 271.
insured ship, 272.
both ships, 271.
demurrage expenses caused by collision, 272.
the running-down clause in a policy, 272.
insurance against negligence not illegal, 276.
nor against risks beyond statutory liability, 165.
loss after termination of voyage insured, 276.
damages paid by tow for damage by tug, insurers liable, 170.
cost of raising wreck, 273.
insurers of tow liable for damage by tug, 274.
damage by sunken ship, 274.
insurers subrogated to rights of assured, 276.
insurers may sue in name of sellers who have been paid, 97.
assured recovering damages is trustee for insurer, 277.
sufferer by collision may recover, notwithstanding compensation received from insurer, 115, 278.
insurer cannot recover where assured could not, 278.
collision between two ships of same owners, 278.
no average contribution for collision, 279.
division of loss, 129.
insurers sue in name of assured, 98.

Interest,
on damages added to amount of statutory liability, 102, 109, 163. And see *Damages.*
principles on which interest allowed, 102.
Admiralty practice as to, 103.

International Convention, draft convention, 548.

Interrogatories, 291.

Jamming of Cable, 9.

Jettison after collision, 105.

Joinder of co-defendants, 298.

Judgment,
not admissible as evidence, 213, 289.
whether it can be pleaded, 289.
foreign, whether enforceable in Admiralty, 211.
res judicata, plea of, 211, 289.
for balance, where both ships in fault, 128.
in personam bar to action *in rem*, 213.
by default, ship not arrested, 304.

Judicature Act, rule of division of loss, 122.

Jurisdiction,
of common law Courts for collision on high seas, 200.
for collision in foreign country, 200, 201, 204.
where plaintiff and defendant are aliens, 199.
Admiralty. See *Admiralty Jurisdiction.*
criminal, for collision, 280.
collision with pier abroad, 201, 204.

Jury,
assessment of damages by, Lord Campbell's Act, 302.
full damages, not given by, where fault in plaintiff, 28.
narrow channel, whether question for, 445.

Keep her Course and Speed,
duty to act under Art. 21, note, 421.
such action must not be premature, 417.
duty of ship to, Art. 21..409.
meaning of expression, 388, 411.
ship rounding a point, 411.
duty of one of two crossing steamships to, Art. 19..400.
duty where two ships are approaching pilot cutter, 411, 465.
duty of sailing ship to, approaching steamship, Art. 20..404.

KEEP HER COURSE AND SPEED—*continued.*
duty of overtaken ship to, Art. 24..437, 440.
ship by the wind may luff a little, 388, 414.
how ship hove-to is to, 413.
reefing, 392.
duty of vessel rounding point, 411.
duty of vessels in winding rivers, 411.
duty of merchantman meeting warships, 458 *seq.*

KEEP OUT OF THE WAY,
how a ship is to, Art. 22..418.
must not cross the other ship's bows, 387, 418.
presumption against ship whose duty is to, 34.
trawler with trawl down, 407, 408.
ship lying with engines stopped, 404.
duty of merchantman meeting warships, 458 *seq.*
duty of vessel not under command, 346.

KING'S SHIP,
collision with, liability, 62, 63, 94, 458.
whether bound by regulations, 59; Art. 13..366.
responsibility of captain, with pilot on board, 239.
ship chartered by government, 67.
statutory presumption of fault, whether it applies, 59.
not subject to compulsory pilotage, 215.
whether duty to keep out of way of, 458.

LANDING STAGE, collision with, 1, 77.

LAUNCH,
special precautions at, 498 *seq.*
liability for damage by unregistered, 153, 158.
damage by, is "by improper navigation," 162.
rule as to division of loss applies in case of damage at, 125.
damage by, limitation of liability, 162.

LAW. See *Foreign Law; Common Law; Maritime Law; American Law.*

LAYING-TO. See *Hove-to.*

LEX FORI,
rule as to application of, 199.
claimants against ship rank according to, 204.
compulsory pilotage, non-liability of owners, 204, 206, 215.
statutory rules as to presumption of fault are, 59, 206.
whether limitation of liability is, 207, 208.
whether rule as to division of loss is, 208.

LEX LOCI,
rule as to application of, 198.
liability for negligence of agents, collision abroad, 202, 203.
whether limitation of liability is, 206, 207.
whether rule of division of loss is, 123, 208.

Liability. See *Harbour Authority ; Dock-owners.*
none created by mere fact of collision, 1.
of actual wrong-doer, 62, 67.
of master, 62.
when pilot on board, 214 *seq.*, 231, 239.
of pilot, 62. And see *Compulsory Pilot.*
of shipowner for negligence of officers and crew, 63.
of salvor, 11, 12, 65, 195.
of charterer, 66, 69.
as between charterer and owner, 70.
of Trinity pilot, 164.
of owner where ship is demised, or under charter, 66—68.
of underwriters. See *Insurance.*
of owners of sunken ship, 87.
by civil law, 63.
damage to pier or harbour works, 68, 201.
of persons other than shipowner, 69.
of ship in Admiralty, as distinguished from owner, 70, 81.
American law on this point, 85.
of pilotage authority for pilot's negligence, 93, 215.
in case of damage by King's ship, 62, 63, 94.
by foreign public ship, 94.
of foreign ship for negligence of crew, 202, 203.
cargo-owner not liable, 75, 94.
for servants acting as volunteers, 64.
of part owners, 95.
joint wrong-doers, 95.
in case of collision by fault of a third ship, 27.
mere ownership creates none, 64.
collision between ships of same owner, 95, 99, 267.
as between co-owners, 95.
respective liabilities of tug and tow. See *Tug and Tow.*
of shipowner to charterer, collision by fault of crew, 270.
no average contribution for collision, 279, 283.
of owner for injury to pilot by fault of crew, 99.
of foreign sovereign, 209.
of freight, in action *in rem*, 75.
limitation of. See *Limitation of Liability.*
unlimited, cases of, 69, 157, 158, 163.
for loss of life or personal injury. See *Loss of Life ; Injury to Person.*
of wrong-doer, though claimant insured, 115, 278.
for interest and costs beyond statutory amount, 163.
at common law for damage at sea, 200.
for collision abroad, 86, 200, 203.
where both ships in fault, 117 *seq.* See *Division of Loss.*
foreign law as to. See *Foreign Law.*
where no fault in either ship. See *Inevitable Accident.*
of unregistered British ship, 158.
by the maritime law, 86, 202.
for wilful injury, 15, 28, 65, 84.
for negligence. See *Negligence.*

Liability—*continued.*
of wrong-doer to indemnify employer, 69.
for fault of compulsory pilot. See *Compulsory Pilot.*
parting of moorings, 9, 93.
infringement of the regulations. See *Presumption of Fault.*
collision with lightship, 115, 164, 284.
for damage by a launch, 153, 158, 162.
by sunken ship, 87.
by ship abandoned, 87.

Licence, Pilot's, masters' certificate, ships of same owners, 215.

Lien, Damage,
generally, 73 *seq.*
damage to pier or harbour works, 68, 76, 77, 78.
damage to or by a barge, 78.
collision in body of a county, 76.
where jurisdiction in Admiralty by statute, 76.
indelible character of, 74.
whether it attaches where no collision, 76.
none, for loss of life or personal injury, 114, 132, 210.
not founded on noxal action or deodand, 71.
none for damage by carrier to cargo, 76.
to what it attaches, 75.
cargo not subject to, 75, 271.
except to compel payment of freight, 75.
it attaches to freight, 75.
and to ship's tackle and equipment, 75.
liability of ship and owners, how far concurrent, 70 *seq.*
remains after death or bankruptcy of shipowner, 74, 79, 81.
not barred by Statute of Limitations, 74, 81.
priority of liens, 78.
takes precedence of liens arising from contract, 78.
postponed to subsequent salvage lien, 78.
where two or more actions for same collision, 78, 79.
where ship owned by company in liquidation, 74, 79.
discharge of, 79, 81.
assignment of, 80.
laches in enforcing, 74, 81.
American law as to, 85.

Life, Loss of. See *Loss of Life.*

Life Salvage, damages not subject to claim for, 115.

Lightship,
penalty for injuring, 115, 164, 284.
limitation of liability in case of collision with, 164.
riding by, 486.

Lights, Ships',
range of, 334, 343.
rules concerning, 334 *seq.*
powers to enforce, 338.

Lights, Ships'—*continued.*
must be obeyed with reasonable strictness, 51, 341, 342.
whether obligation to carry, by the maritime law, 334, 362.
clear night no excuse for absence of, 337.
other than regulation lights not allowed, 335, 336.
except in exceptional cases, 336.
fisherman's flare, 355, 358.
sunken ships, duty to light, 335.
if lost, must be replaced, 335.
lost in previous collision, 25, 336.
must be carried in positions required by law, 336, 341.
ship with improper lights may be stopped, 338.
taken down to be trimmed, no excuse, 336.
riding lights, Art. 11..361.
side lights, Art. 2, Art. 5..339, 348.
carried in the rigging, 52.
mast-head light for steamships, 338.
wrong or misleading lights, 48, 336.
spare lights, 336.
ship ashore, duty to light, 82, 88, 335.
obscuration of lights, 336, 342, 363, 383.
screening, 339, 342.
infringement of regulations as to, 42 *seq.*, 51, 54, 341.
must be carried from sunset to sunrise, 334, 337.
punishment for not carrying, 338.
special lights required by local rules, 337.
shipowner responsible for proper lights being carried, 338.
for steamships under way, Art. 2..338.
range lights for, 338.
ship dredging stern foremost, 340.
Board of Trade instructions as to, 341.
screens, infringement of regulations as to, 341, 342.
inspection of, by Court, 343.
for ships under convoy, Art. 13..365.
for ships not under command, Art. 4..344.
for ship at anchor, Art. 11..361.
for sailing ships, 348.
for sailing ship hove-to, 348.
for men-of-war, Art. 13..365.
for telegraph ships, 317, 344.
for steamships towing, Art. 3..343.
for sailing ship towing, 344.
for any ship in tow, Art. 5..348.
for steamship under sail, Art. 14..366.
for ship ashore, Art. 11..361.
for overtaken ship, Art. 10..358.
for dredgers in the Clyde, Thames, 520, 538.
for sailing ships, Art. 6..348.
for fishing boats, Art. 9..353 *seq.*
riding to nets, 355.
line fishermen, 354.
for trawlers, 354 *seq.*

Lights, Ships'—*continued.*
trawler with gear fast, 355.
flare or detonating signal, Art. 12..364.
fishermen may use flare, 355, 358.
for pilot boats. Art. 8..350.
ship driving from her anchors, 347.
for boats and small craft, Art. 6..348; Art. 9..353.
when they cannot be carried for bad weather, 348.
ship moored to buoy or wharf, 363.
stern light for overtaken ship, Art. 10..358.
how to be carried, 359.
sometimes indicate direction of ship's head, but not her course over the ground, 398.
burden of proof as to, 30, 37.
local rules as to. See *Humber, Mersey, Thames, &c. Rules*, in Appendix.

Limitation of Liability,
none by maritime or by Roman law, 146, 147.
depends upon statute, 149.
based on protection, 150.
liability on master's contracts, foreign law, 148.
analogy of noxal action, 148.
deodand, 71, 148.
connection between limitation of liability and division of loss, 148.
connected with liability of ship to arrest, 149.
history in English law, 149.
the existing law, 57 & 58 Vict. c. 60, s. 503..152, 153.
what owners are entitled to, 157, 158, 163.
charterers by demise may limit, 157.
justice of the Acts questioned, 151.
applies to all ships, and in all waters, 155.
excluded by contract, 156.
assessment of damages before limitation action not binding, 166.
foreign ships' tonnage, how calculated, 153, 154.
deduction of crew spaces, 152, 156, 157.
double bottom, 154.
steamships' tonnage, how calculated, 152. See *Tonnage.*
register not conclusive as to tonnage, 156.
tug and tow, measure of liability, 126, 160, 195. See *Tug and Tow.*
successive actions by cargo-owners and shipowners, 301.
unregistered British ships not entitled to, 158.
except as provided by statute, 153, 157.
ship, foreign at date of collision, purchased by British subject, 159.
what ships entitled to, 158.
limit of liability where more than one collision, 160.
without actual fault or privity, meaning of, 157, 162.
co-owners, one in fault, 158.

Limitation of Liability—*continued.*
owners not discharged by sinking of ship, 161.
Lord Campbell's Act, damages recoverable under, 161.
loss of life, amount recoverable, 152, 161.
improper navigation, meaning of term, 161 *seq.*
injury to tow by tug, 162, 179, 194.
injury by a launch, 159, 162.
shipowner liable for interest in addition to, 163.
shipowner liable for costs in addition, 163.
wrong-doer not purged by payment of statutory liability, 163.
applies to injury to craft, persons, or goods afloat, 163.
passengers' luggage, 164.
limitation of liability for damage to property and rights ashore, 153.
special limitation of liability of dock, &c. authorities, 153.
railway company carrying in ship of other owners, 164.
liability of owner navigating own ship is unlimited, 158, 164.
Trinity House pilot, 165.
actual wrong-doer unlimited, 157.
single ship company, 165.
liability for damage to lightship, 164.
as against Crown, 164, 166.
does not affect liability of cargo to arrest, 164.
combined with rule as to division of loss, 128, 165.
insurance against risks beyond, 165.
its policy discussed, 151.
owners entitled to, in contract as well as tort, 160.
whether *lex fori*, 207, 208.
foreign ships under old law, 207.
priorities of claimants, 165.
some claims settled or paid, 166.
proof by Crown, 166.
holder of bottomry bond on freight, 166.

Limitation of Liability, Action for, 299.
may be claimed by defence or counterclaim, 299.
costs of limitation action, 300.
evidence by affidavit, 300.
whether liability must be admitted, 300.
cargo owner, issue whether one or both ships in fault, 300.
transfer of action after judgment limiting liability, 300.
proof against fund in Court, estoppel, 301.
payment out of Court, unappropriated balance, 300.

Limitation, Statutes of, do not bar damage lien, 74.

Lis alibi pendens, 211.

Liverpool,
compulsory pilotage, 221, 252.
local rules for Mersey river, 524.
sea channels, 524.

Local Rules of Navigation,
power to make, 504.
saving clause as to, Art. 30. .501.
ignorance of, no excuse, 502.
where inconsistent with the sea regulations, 318, 503.
foreign ships bound by, 205.
in foreign waters, 205.
applicable in conjunction with sea regulations, 55, 318, 504.
in dockyard ports, 503.
customary track in winding rivers, 446. And see *River*.
practice inconsistent with the sea regulations not good, 331.
effect of, upon question of negligence, 501, 502.
the penalty, infringement of, whether within, 55.
for American inland waters, 318.
the Clyde, 519.
the Humber, 521.
Manchester ship canal, 523.
Mersey river and sea channels, 524.
Tees, 528.
Suez Canal, 528.
Thames, 531.
Tyne, 544.

Log,
ship's log evidence against, but not for, the ship, 289.
though the mate dies after collision, 289.
official log, 289.
coastguard, lighthouse, and lightship, 290.

London Trinity House,
compulsory pilotage, 245, 253 *seq*.
pilotage districts of, 254.
outport districts, 254.
evidence as to what is an outport district of, 255.
exempt ships, 255.
oversea licences, 258.
pilotage certificates, masters and mates, 246, 255, 257.

Look-out,
duty as to, generally, 471.
astern, 360, 473.
not to be employed on other duty, 472.
glasses, 474.
station for, 472, 475.
absence of, not causing collision, 476.
anchor watch, 472.
craft moored to shore, 474.
what is sufficient, 472.
American cases as to, 474.
duty of tug and tow to keep, 187, 190, 473.
when pilot on board, 231, 234.
ship moored to shore, 474.

Lord Campbell's Act. See *Campbell's Act, Lord*.

Loss, Division of. See *Division of Loss.*

Loss of Life. See *Campbell's Act, Lord.*
limit of liability in case of, 152, 161.
criminal liability for, 279.
priorities of life claimants, limited liability, 165.
damages for, 114.

Luffing, 388, 390.

Lying-to. See *Hove-to.*

Mail Ships,
speed of, 377.
arrest of, Mail Ships Act, 210.

Man-of-War. See *King's Ship.*

Manchester Ship Canal,
local rules, 523.
pilotage compulsory while waiting for tide to get into, 221.
and for vessels passing to and from entrance to, 221.
collision regulations do not apply in, 316.
bye-laws not confirmed, 523.

Maritime Law,
existence of, questioned, 146.
division of loss, whether a rule of, 117 *seq.*
no limitation of liability by, 146.
overtaking ship to keep out of the way, 437.
the regulations for preventing collisions are part of, 321.
as to ships' lights, 334, 362.
liability for negligence by, 86, 202.
liability of shipowner, 202.
division of loss. See *Division of Loss.*

Maritime Lien. See *Lien, Damage.*

Master,
duties of, when pilot in charge, 231.
relative authorities of master and pilot, in law, 229, 239.
liability for acts of crew, 62.
for acts of pilot, 239.
as carrier, 270.
formerly sued, with the ship, 63, n.
for neglecting to carry lights, 338.
whether fellow servant of crew, 99.
duty of, with regard to cargo injured by collision, 106.
as to standing by to assist, after collision, 57.
co-owner, limitation of liability, 158.
having pilotage certificate, owner's liability, 215, 246.
pilotage certificates granted to British and foreign, 246, 258.

Measure of Damages. See *Damages.*

Meeting Steamships,
rule for, Art. 18..395.
distinguished from "crossing" and "overtaking" ships, 397.
"end on, or nearly end on," meaning of the term, 395, 399.
in a winding river, what are, 400, 445.

Mersey,
pilotage in, 221, 252.
local rules for the river and approaches, 524.
launch in, special precautions for, 498.
effect of infringement of local rules, 55.

Mid-channel, meaning of the term in Art. 25..442.

Misdemeanor. See *Criminal Liability.*
endangering life or ship, 280.
infringing the regulations, 280.
not standing by to assist, 58.
neglect to carry lights, 338.
navigating on wrong side, 441.
injuring lightship, 284.

Misleading,
by hailing or whistling, 5 n., 467.
by improper lights, 5, 43, 48, 51, 336.
as between tug, tow, and third ship, 54.

Moorings,
parting of, 9, 25, 93.
insufficiency of, in dock, penalty for, 481.
ship at, to carry riding light, 361, 363.
making fast to other craft, 483, 486.
when required, 480.

Mud,
vessel dragging through mud is under command, 345.
whether vessel reversing propeller to clear mud must whistle, 469.

Narrow Channel,
meaning of expression, 441.
starboard side rule, Art. 25..440.
under former Acts, 440.
what is the "fairway," 442.
whether for judge or jury to say, 445.
navigation of a winding river, 326, 445, 446, 490.
consequence of infringement of starboard side rule in, 441.
passing a ship ahead in, 11, 440, 495.
application of crossing rule in, 443, 444.
turning to windward in, 438, 488.

Narrow Channel—*continued.*
speed in, 498.
raising swell in, 498.
duty of vessel entering, 443, 444.
system of buoyage in, 449.

"Navigation, Improper." See *Improper Navigation.*

Navigation, Rules of. See *Regulations; Local Rules.*

Navy,
collision with King's ship, liability, 62, 63, 94. And see *King's Ship.*
position and authority of pilot in, 239.
ships of, whether bound by the regulations, 59, 366.

Negligence,
generally, 1 *seq.*
defined, 2 *seq.*
may consist of breach of regulation or of good seamanship, 3.
is the same at law and in Admiralty, 15.
a wrong step taken in the agony of collision is not, 3.
careless management of thing likely to do damage, 36, 68.
causing collision, 12.
collateral, not causing the loss, 20, 24.
defective equipment, 24, 36, 162, 228.
causing the loss but not the collision, 13.
causa proxima non remota spectatur, 14.
in one ship does not excuse the other, 5, 466.
causing a collision which makes a second inevitable, 25.
of one ship causing a collision between others, 25—27.
after collision, 101, 104.
non-compliance with the regulations is, 5, 321.
or with local rules of navigation, 501.
presumed by law. See *Presumption of Fault; Infringement of Regulations; Standing By.*
stress of weather, excuse of, 492.
unnecessary alteration in the course, 28.
proof of negligence, 29 *seq.*
burden of proof, 29.
on part of compulsory pilot, 222, 224.
failure to hear fog-signal, 35.
what is *primâ facie* proof of, 29.
whether plaintiff must prove absence of contributory, 31.
at a launch, 3, 162, 498.
in a salvor, 11, 12, 65.
in a tug, 12. See *Tug and Tow.*
whether negligence to heave-to in track of ships, 391.
contributory negligence, 16 *seq.*
whether negligence of compulsory pilot is, so as to affect the owners, 191, 192, 222, 226.

Negligence—*continued.*
where pilot's negligence affects the ship, 24, 222, 226.
where with ordinary care the collision might have been avoided, notwithstanding negligence in the other ship, 18 *seq.*
negligent act causing loss by reason of act of third party, 15.
cases of equal negligence in both ships, 22.
collateral negligence influences juries, 28.
wilful injury, 28, 65, 111.
legal consequences of, by maritime law, 202.
consequences of, not got rid of by payment of amount of statutory liability, 163.
rule as to division of loss does not affect question what is negligence, 17 *seq.*, 133.
insurance against, not illegal, 275.
as to sunken ships, 87 *seq.*

Netherlands, Law of. See *Holland.*

Noxal Action, analogy between, and law as to damage lien and limitation of liability, 71, 148.

Nuisance,
ship brought up in fairway, 31, 477.
ship sunk in fairway, duty to buoy and light, 88.

Ouse, River (Humber), rules, 514.

Overtaken Ship,
what is, 360, 400, 435.
duty of, to show light astern, Art. 10..358.
duty of, to keep her course, Art. 21..409.
"crossing" ship may be, 401.
is not "approaching" the other within Art. 23..431.

Overtaking Ship,
duty of, to keep out of the way, Art. 24..435.
is a rule of maritime law, 436.
may be a "crossing" ship, 401.
what is an, 401, 435.
sailing ship overtaking steamship or sailing ship, 435, 437.
must be going faster than ship ahead, 437.
cases illustrating Art. 24..438.
passing another in a narrow channel, 438.
ships plying to windward in company, 438, 439.

Owner of Cargo. See *Cargo Owner; Carrier.*

Owners of Ship,
liability of. See *Liability.*
at common law, 63.
by maritime law, 86, 202.
by Roman law, 62, n.
of abandoned ship, their liability for damage by, 87.
whether liable for wilful and criminal acts of crew, 28, 65.
not liable for negligence of compulsory pilot, 214, 215. And see *Compulsory Pilot.*
how affected by fault of compulsory pilot, 24, 222, 226.
not liable *quâ* owners, 64.
primâ facie liable as employers of crew, 64.
liable for acts of crew within scope of their employment, 64.
resident abroad, liability of, 201.
of foreign ship. See *Foreign Ship.*
service of writ on foreign, 285.
foreign. See *Foreign Law; Foreign Ship.*
foreign liable for infringement of the regulations, 59, 205.
foreign, defence of compulsory pilotage, 204, 206.
foreign, whether liable for not standing by, 205.
unregistered, liability of, 64, 153, 158.
unregistered, recovery by, 97.
liable for negligence of Thames waterman, 219.
when liable for negligence of pilot. See *Compulsory Pilot.*
indirectly liable in Admiralty when not at law, 81 *seq.*
not discharged from liability by loss of their ship, 94.
part owners. See *Part Owners.*
suing in successive actions, 97.
limited liability of. See *Limitation of Liability.*
"actual fault or privity of," meaning of term, 157.
wrong-doing master a part owner, 158.
pro hâc vice owners, liability of, 83 *seq.*
collision between ships of same owner, 95, 267.

Oyster Bed, damage to, 77, 304.

Part Owners,
successive actions by, 97.
contribution between, for damages, 95.
several liability of, 95.
wrong-doing master part owner, limitation of liability, 158.
surety for damages, recovery by, against co-owner, 95, n.
damage to cargo, action for. See *Cargo: Cargo Owner.*
survival of action in case of death of part owner, 98.
collision between ships owned in part by same persons, 95, 267.

Parting of Cable or Moorings, 9, 25, 33, 93.

Partners,
liability of, for collision, 69.
is unlimited, where not shipowners, 69.

Party, Third, procedure, 197, 297.

Penalties.
infringement of the regulations, 39 *seq.*, 56.
for not standing by after collision, 56 *seq.*
injury to lightship or buoy, 115, 284, 486.
cancellation of certificate, 281.
neglecting to carry lights, 338.
improper moorings in dock, 482.
for not taking pilot, 247.

Perils of the Sea, collisions within exception of, 266, 269.

Person in Charge,
who is, within rule as to standing by, when pilot on board, 57.
is in owner's employment, *primâ facie*, 64.

Person Liable. See *Liability; Owners; Compulsory Pilot; Wrongdoer.*

Personam, Action in. See *Action.*

Personification of Ship, the wrong-doing ship, 2, 70 *seq.*

Persons entitled to Recover, 97 *seq.*
bailees of injured ship, 97.
under Lord Campbell's Act, 97. See *Campbell's Act.*
persons or owners of cargo on board wrong-doing ship, 97, 98.
persons injured, 97.
common employment, doctrine of, 96, 99.
compulsory pilot not fellow servant of crew, 99.
unregistered owners of injured ship, 97.
indorsee of bill of lading, 97.
insurers, 98.

Pier,
damage to, 68, 76, 78.
damage to, by compulsory pilot, owners not liable, 219.
damage to pier abroad, 201, 204.
liability in case of damage to, 68.
maritime lien for damage to, 68.
insurance, collision clause, 272.

Pilot. See *Compulsory Pilot.*
authority and duties of, in law, 229.
whether law and practice agree as to his authority, 239.
duty to take full charge, 235.
could not be sued in Admiralty, 295.
liability of Trinity, is limited, 164.
is owner's servant, when not compulsory, 214.

Pilot—*continued.*
injury to pilot, common employment, 99.
common law, actions against, 62.
master's licence, ships of same owners, 215.
formerly employed by the merchant, 214.
called as witness, 241.

Pilot Boat,
collision with, 352.
signals for, 338.
lights of, Art. 8..350.
steam, 351.
unlicensed pilot, 352.
" engaged on her station," lights, 352.
answering flare of, 353.
competing pilot boats, collision, 352
duties of vessels *inter se* making for, 403, 411, 465.

Pilotage Acts and Authorities, list of, 247 *seq.*

Pilotage Authority not liable for pilot's negligence, 93, 215.

Pilotage Certificate,
pilotage not compulsory for ship whose master has, 215, 246.
granted to masters and mates of British and foreign ships, 246, 255, 258.

Plaintiffs, who may be. See *Persons entitled to Recover.*

Pleadings, 287. And see *Practice.*

Port Helm,
applicable only to steamships meeting end on, Art. 18..395.
both ships must port, 396, 466.
old rule as, 396, 405.
effect of port helm with propeller reversing, 433, 434.
rule of, does not apply to sailing ship meeting steamship, 405.

Port Tack, duty of ship on, Art. 17..385.

Practice of Seamen,
inconsistent with the regulations is illegal, 331.
as to navigation of winding rivers, 326, 446, 490.
in collision actions. See *Practice: Collision Actions.*

Practice: Collision Actions,
service of writ out of jurisdiction, 285.
on clerk, 285.
address of writ, 285.
by whom writ to be served, 285.
owners resident abroad, 285.
plaintiffs suing as " owners," 286.
preliminary act, 286.
in what actions necessary, 286.
proof must be *secundum allegata*, 287.

PRACTICE: COLLISION ACTIONS—*continued.*
pleading, infringement of regulations, 287.
,, contributory negligence, 288.
,, compulsory pilotage, 288.
,, judgment at law, 288.
,, defence, 288.
evidence. See *Evidence.*
who to begin in collision action, 291.
inspection, order as to, 291.
assessors, their function, 292.
difference of opinion between them, 141, 292.
seamanship, evidence of experts, 292.
default of appearance, judgment, 304.
plaintiff, unsuccessful at law, cannot sue in Admiralty, 293.
nor at law and in Admiralty at same time, 293.
consolidation of actions. See *Consolidation.*
plaintiff lying by to await result of previous action, 294.
cross-actions, stay of proceedings where one ship only arrested, 295.
cross-actions, one in County Court, 295.
separate actions for injury to property and person, 295.
action against pilot, 295.
against Dublin Steam Packet Co., notice, 296.
action at law, supplemented by proceedings *in rem*, 296.
and *vice versâ*, 296.
re-arrest of ship for costs, 297.
loss of life, no action *in rem*, 114, 210, 297.
action *in rem* against public authority, 295.
third party procedure, 197, 297.
arrest of wrong ship, 298.
limitation of liability action for. See *Limitation of Liability.*
successive actions by shipowner and cargo owner, stay, 301.
damages assessed by registrar and merchants, 302.
remoteness of damage, whether for registrar or Court, 302.
Lord Campbell's Act; assessment of damages by jury, 302.
harbour authority, action against, limit of time, 93.
transfer of action, King's Bench and Admiralty Divisions, 300.
surety in Admiralty bond, recovery against co-owner, 302.
liability of master in bond to stop arrest, 302.
Admiralty jurisdiction of High Court, 296, 303.
of County Courts, 303, 304.
damages in excess of *res* or bail, 80, 296.
of Board of Trade as to supplying copies of depositions, 290.

PRECAUTIONS,
when passing over fishing grounds, 489.
saving clause as to ordinary or special, Art. 29. 470 *seq.*
ship navigating in unusual manner, 489.
and by ship of peculiar construction, 496.
in fog. See *Fog.*

Presumption of Fault. See *Burden of Proof.*
statutory rules as to, in case of—
infringement of the Regulations, 39 *seq.* See *Infringement of the Regulations.*
not standing by to assist after collision, 56 *seq.* See *Standing by.*
history of legislation as to, 39.
object of statutory rule, 41.
deficiency of lights, 42 *seq.*, 51.
steering rules, 45, 52, 385 *seq.*
shipowner liable where fault presumed, 60, 132.
division of loss where fault is compulsory pilot's, 129.
whether tug affected by fault of tow, and *vice versâ*, 54.
infringement of local rules, 55.
applies where regulations infringed elsewhere than at sea, 56, 317.
in case of foreign ships, 59, 316.
rules as to, are *lex fori*, 59, 206.
no application to King's ships, 59, 458.
against ship required to keep out of the way, 34.

Priority,
of liens, 78.
limitation of liability, life claims, 165.

Privity of Master or Owner,
no limitation of liability in case of, 157, 162.
right of co-owners to limitation of liability, 158.

Proceedings in Rem. See *Lien, Damages.*
generally, 70 *seq.*
involve arrest of ship unless bail given, 73.
ship may be liable in, where owner is not, 81 *seq.*
supplemented by common law action, and *vice versâ*, 296.
damage to cargo by carrier, 76, 271.
do not always give rise to maritime lien, 76.
against barge, 78.
against public authorities, 295.
where no collision, but damage, 76.
for loss of life or personal injury, do not lie, 114, 132.
against ship of foreign sovereign, 209.
against tug, negligent towage, 197.

Prohibition, collision, 199.

Proof. See *Evidence; Burden of Proof.*
of negligence, 29 *seq.*
where defendant admits fault, 29.
as to fault, when compulsory pilot in charge, 222, 224.
of regulations, 316.

Propeller,
effect of on ship, when reversing, 433, 434.
moving, in dock, 491.

Protest, evidence against, but not for, the ship, 289.

Public Authorities,
actions *in rem* need not be brought within six months, 295.
aliter in personam, 93.

Racing, 23, 439.

Raft,
collision with, 36, 491.
unwieldy raft, damage by, 36, 183.

Railway Company, liability of, when carrying by sea, 161, 270.

Recover, Persons entitled to. See *Persons entitled to Recover*.

Reefing, whilst risk of collision, 392.

Reference to Registrar,
costs of, do not follow result of action, 310.
as to consequential damages, 302.
exorbitant claim, 310.

Refusal to Move,
in dock, 491.
at a launch, 498.

Registrar. See *Reference to Registrar*.

Regulations for Preventing Collisions at Sea,
scope of authority to make regulations conferred by statute, 316 *seq.*
whether *ultra vires* in respect of inland waters, 317.
in respect of whistle signals, 318.
of 1897, set out, 507.
regulations of 1880, and of 1884, where set out, 332.
history of legislation as to, 314.
early history of the port-tack rule, 314.
how proved, 291, 316.
regulations for purposes other than prevention of collision, validity, 318.
departure sanctioned by Art. 27 and by statute, 450.
whether Art. 27 refers only to "Steering and Sailing Rules," 451.
to minimise effect of, as well as to prevent collision, 430.
in what waters they apply, 317, 332, 503.
their application in waters where local rules are in force, Art. 30..55, 56, 318, 501.
in winding rivers. See *Rivers*.
to what ships they apply, 319.
traders and yachts, 319.
heavy ships and small craft, 319.

Regulations for Preventing Collisions at Sea—*continued.*
to ships propelled by machinery, 333.
King's ships and foreign ships of war, whether bound by, 59, Art. 13..365.
whether they apply to merchantmen meeting warships, 458.
penalty for disobeying. See *Presumption of Fault; Infringement; Penalties.*
their international character, 319.
uniform construction by all nations desirable, 319.
safety attained by uniform observance, 453.
apply, primarily, to ships on fixed courses, 322.
rules as to construction of, 320, 332, 451. See *Construction.*
apply until the ships are clear, 331.
they furnish the test of negligence, 321.
departure from allowed only in case of necessity, 450.
convenience no excuse for departing from, 465.
local usage, not to be neglected, 322.
not to be applied so as to cause collision, 455.
they apply where there is risk of collision, 323.
and (*semble*) where probable risk of collision, 323.
indications of risk, 324.
uncertainty as to risk, 327, 328.
whether they apply where collision is inevitable, 326, 426.
what constitutes risk of collision, 324.
alteration of course for safety where there is no risk, 327.
alteration of course causing risk, 327.
alteration of course in fog, 327.
"meeting" ship cannot become "crossing" ship, 329.
apply until risk determined, 331.
close shaving, 324, 330, 479, 485.
must be promptly obeyed, 330.
both ships must obey them, 322.
ships to be supplied with lights, horn, &c., 331.
practice inconsistent with regulations is bad, 331.
to ships of what nations they apply, 315, 332.
decisions on earlier regulations are binding, 332.
steam vessel, what vessel is, 333.
"under way," meaning of the term. See *Under Way.*
rules concerning ships' lights. See *Lights, Ships'.*
steering and sailing rules, 385 *seq.*
for sailing ships, Art. 17..385.
for steamships meeting, Art. 18..395.
for steamships crossing, Art. 19..400.
for sailing ship and steamship, Art. 20..404.
the right of way, burden of proof, 34, 168.
ship dead in the water, 397.
ship hove-to must comply with steering and sailing rules, 390, 413.
ordinary precautions to be observed, Art. 29..470 *seq.*
small ships not required to keep clear of large, 319.
local rules of navigation. See *Local Rules.*

Remoteness of Damage, 14, 100, 113.

Removal of Wreck, duty of harbour authority as to, 88, 90.

Repairs,
cost of, allowed as damages, 101.
demurrage where repairs rendered necessary by two collisions, 111.
possessory lien for, whether damage lien ranks before, 78.
duty to repair injured ship after collision, 101, 106, 107.

Res. See *Proceedings in rem ; Lien.*

Res Judicata, 211.

Respondeat superior,
doctrine of, is *lex loci*, 204.
does not apply in case of compulsory pilotage, 214 *seq.*
or to superior officer in Royal Navy, 94.

Restitutio in integrum, meaning of phrase, 100.

Reversed Propeller, action of, on ship's head, 433, 434.

Riding Light, Art. 11..361 *seq.* See *Lights, Ships'.*
for fishing boats, Art. 9..353 *seq.*
small craft, Art. 7..349.

Risk of Collision,
what constitutes, 324 *seq.*, 400.
indications of, 324.
uncertainty of facts causing risk, 327.
instances of, 328.
whether regulations apply where there is probability of risk, 323, 416.
or after risk is determined, 422.
altering course so as to cause, 327, 439.
altering course where there is no, for greater safety, 328.

River,
whether the regulations apply in, 318.
customary track of ships in, 445.
navigation of winding, 326, 411, 445, 482.
starboard-side rule in, Art. 25..440, 443, 445.
American rivers, rules of navigation in, 445, 448, 482.
application of crossing rule in, 402 *seq.*
duty to ease before rounding a point, 443, 447.

Roman Law,
liability for collision, 63.
no limitation, 117.

Rounding-to, 403, 472.

Rule of the Road. See *Regulations for Preventing Collisions; Local Rules; Foreign Law; Foreign Ships.*

Running-down Clause, in policy of insurance, 272.

"Running-free," meaning of the term, Art. 17..386.

Sailing Vessel,
what is, 333.
duty of, approaching steamship, Art. 20..404, 409, 417.
crossing, Art. 17. See *Crossing Ships.*
running free, Art. 17..385.
close-hauled, Art. 17..385, 390.
approaching another on opposite tack, Art. 17..385.
to go at moderate speed in fog, &c., Art. 16..381.
overtaking another steam, or sailing ship, Art. 24..435.
sound signals for, in fog, &c., Art. 15..366.
no "end on" rule for, 397.
hove-to. See *Hove-to, Ship.*
to keep out of the way of fishermen, Art. 26..450.
duty approaching steam trawler, 408, 409.

Salvage,
collision with salvor, 281.
loss of expected salvage, damages, 109.
expenses, damages, 105, 106, 110.
after collision, 281.
towing ships clear of each other, 281, 282.
damages, not subject to claim for life salvage, 115.
service, whether within scope of master's employment, 65, 195.
action, whether costs of, recoverable as damages, 110.
duty to stand by does not affect right to, 58.
not recoverable by wrong-doer in collision, 281.

Salvor,
collision with, 11, 12, 65, 195, 281.
collision caused by fault of, 65, 195.

Scope of Employment,
employer liable for acts of servant within, 64.
whether salvage service is within, of master, 65.

Screens,
regulation as to, Art. 2..338.
shortness, or absence, of, 44, 341.

Seamanship,
assessors in Admiralty advise as to matters of, 292.
rules of to be observed, 373 *seq.*; Art. 29..470 *seq.*
saving clause in regulations as to, Art. 29..470.

SERVANT,
doctrine of common employment prevents recovery by, 96, 99.
whether master is fellow servant of crew, 99.
compulsory pilot is not servant of shipowner, 99.
pilot is, unless compulsory, 214.
licensed Thames waterman is, 219.

SHEERING, when at anchor, 363, 473.

SHIP,
what is a "ship" within 17 & 18 Vict. c. 104..304.
25 & 26 Vict. c. 63, s. 419..59.
the regulations, 319.
liability of, by maritime law, 86.
liability of, in Admiralty proceedings *in rem*, 70 *seq.*
not liable for fault of compulsory pilot, 215.
liable where owners are not, 69, 81.
personification of, in Admiralty, 2, 70.
affected by fault of those on board, 81 *seq.*
limitation of liability for damage to, 163.
chartered, liability for damage by, 66, 68, 82.
liability of, *in rem*, for not standing by, 60.
not dangerous, *in se*, 36, 68.
disabled, collision with, 8, 11, 463.
disabled by own fault, 26.
of unusual and dangerous construction, 496.
sunken ship, damage by, 87 *seq.* See *Sunken Ship.*
lying dead in the water, 397.
launch. See *Launch.*
not under command, lights and signals for, Art. 4..344.
foreign ship. See *Foreign Ship.*
telegraph ships, lights and signals for, 316, 344.
hove-to. See *Hove-to, Ship.*
barge, damage by or to. See *Barge.*
ferry boat. See *Ferry Boat.*
of foreign sovereign, damage by, 209.
mail ships, speed of, 377.
King's ship, damage by, 62, 63, 94, 458.
King's ships, whether bound by the regulations, 366.
in service of the Government, damage by, 67, 94.
hove-to, must comply with steering rules. See *Hove-to, Ship.*
crossing ships. See *Crossing Ships.*
meeting ships. See *Meeting Steamships.*
overtaking and overtaken ship. See *Overtaking Ship; Overtaken Ship.*
close-hauled. See *Close-hauled.*
abandonment of, after collision, by her own crew, 105.
"improper navigation" of, meaning of, 161.
small craft not required to keep out of the way of large, 319, 492.

Ship—*continued.*
owners, their liability. See *Owners of Ship; Liability.*
ship's lights. See *Lights, Ships'.*
liability for damage by or to. See *Liability.*
rule of the road for. See *Regulations.*
speed of. See *Speed.*
steamship. See *Steamship.*
towing or in tow. See *Tug and Tow.*
on port tack. See *Port Tack.*

Shipowner. See *Owners of Ship.*

Shortening Sail,
when entering harbour, 480.
in a fog, speed of sailing ship, 381.

Shorthand Notes, costs, 313.

Side Lights. See *Lights, Ships'.*

Signals,
sound signals in fog, Art. 15..366. See *Fog Signals.*
whistling to indicate alteration of course, Art. 28..467.
distress, Art. 31..505.
private lights, 337.
for pilot, 338.
pilot boats' flare, Art. 8..350.
for ship not under command, Art. 4..344.
for telegraph ships, Art. 4..344 *cf.* 316.
for ship in tow, Art. 15..367.
for ships towing, Art. 15..367.
for vessels fishing by day, 556.

Slacken Speed,
duty of steamship to, Art. 23..418.
whether duty to, concurrent with duty to alter course, 422.
breach of Art. 23 is breach of Art. 16..419.

Slipping, to avoid collision, 27, 485.

Small Craft, not required to keep out of the way of large, 500.

Smelling the Ground, 492.

Smoke, obscuration of lights by, 383.

Snow Squalls, necessity to sound when in the neighbourhood of, 370.

Sound,
transmission of, in fog, 35, n.
signals for thick weather. See *Fog Signals.*
signals to indicate alteration of course, Art. 28..467.

Sovereign,
ship of foreign, not liable to arrest, 209.
must give bail to answer counterclaim, 210.
submitting to jurisdiction of British Court, 210.

Spain, Law of, liability for negligence, 204.

Special Circumstances,
rendering departure from regulations necessary, Art. 27..377, 450.
crossing a fleet of warships, 458 *seq.*

Speed,
duty of steamship to slacken or stop, Art. 23..418.
moderate speed required in thick weather, Art. 16..372.
what is moderate speed, 374.
of sailing ship in thick weather, 373, 381.
through the water, not over the ground, 498, 529.
carrying on, to get out of fog, 377.
sinking or damaging craft by swell raised by excessive, 27, 498.
of mail ships, 377.
tide immaterial where both ships under way, 375.
instances of improper, 376, 377, 381.
of steamship approaching other craft, 432.
whether steamship in fog may lie dead in the water, 383.
alteration of, is infringement of Art. 21..410.
excuse that engines will not turn over, 377.
ship's power of stopping is relevant in considering, 374.
in Tees, 529.
Clyde, 519, 520.
Humber, 522.
Suez Canal, 528.
Tyne, 546.

Squall, damage by tug not anchoring in, 184.

Standing by,
statutory rule as to, 56 *seq.*
does not affect right to salvage, 58.
applies to collision with a fishing-boat, 59.
foreign ships bound by, 59, 205.
what is "reasonable cause" for not, 58.
on whom the duty is cast, 57, 222.
where compulsory pilot in charge, 57.
duty to look out for distress signals, 58.
what is "proof to the contrary," 57.
rule as to presumption of fault is *lex fori*, 59.
whether rule applies to King's ships, 59.
duty of tug to, after casting off, 189.

Starboard-side Rule,
Article 25..440.
under former Acts, 440.
applies to steamships only, 440.
consequences of being on wrong side, 441.
whether it overrides the steering rules, 443.
whether it applies where local rules in force, 444.
in force under certain local Acts, 441.
decisions as to rule of the road on land, 445.
application in winding river, 447 *seq.*

Starboard Tack, duty of ship on, Art. 17..385.

Statutes,
13 Ric. II., cc. 3, 5 (and Admiralty Court Acts)....199, 303.
7 Geo. II., c. 15....149.
26 Geo. III., c. 86....150.
53 Geo. III., c. 159....150, 158, 299.
6 Geo. IV., c. 78....337.
6 Geo. IV., c. 125....177, 215, 244, 245.
6 & 7 Will. IV., c. 100 (local)....296.
3 & 4 Vict. c. 65....76, 303.
6 & 7 Vict. c. 79....356.
9 & 10 Vict. c. 93....114.
9 & 10 Vict. c. 100....314.
10 & 11 Vict. c. 27 (Harbours, Docks, and Piers Clauses Act)....68, 78, 91, 163, 219, 481, 503.
14 & 15 Vict. c. 79....39, 41, 315, 339, 440.
17 & 18 Vict. c. 104, ss. 20—29....156.
s. 296....324.
s. 297....304, 440.
s. 298....39, 45, 121, 206.
s. 353 (and pilotage)....214 *seq.*
s. 388....225.
s. 458....304.
s. 504....151.
s. 514....299.
20 & 21 Vict. c. 147, Local (Thames Conservancy)....218.
24 Vict. c. 10....76, 295, 299, 303, 343.
24 & 25 Vict. c. 97....280.
25 & 26 Vict. c. 63....40, 59, 151, 206, 222, 281, 315, 356.
27 & 28 Vict. c. 95....114.
28 & 29 Vict. c. 125 (Dockyard Ports)....55, 503.
30 & 31 Vict. c. 124....156, 157.
31 & 32 Vict. c. 45....356.
31 & 32 Vict. c. 71....312.
31 & 32 Vict. c. 78....307.
34 & 35 Vict. c. 78....164, 308.
34 & 35 Vict. c. 110....156.
36 & 37 Vict. c. 66 (Judicature Act)....122, 133, 208, 267, 292.
36 & 37 Vict. c. 85....41, 44, 337, 427.

STATUTES—*continued.*
37 & 38 Vict. c. 52 (Mersey Sea Channels)....44.
38 Vict. c. 15....356.
38 & 39 Vict. c. 90....99.
39 & 40 Vict. c. 36 (Customs Clauses Consolidation)....246.
40 & 41 Vict. c. 16 (Wrecks Removal)....91, 163.
40 & 41 Vict. c. 42....356.
41 & 42 Vict. c. 73....207.
43 Vict. c. 29 (Canada)....318, 491.
43 & 44 Vict. c. 42....99.
44 & 45 Vict. c. 219, Local (Solent Navigation)....55.
46 & 47 Vict. c. 22 (Sea Fisheries)....338. 356, 480.
48 & 49 Vict. c. 49 (Submarine Telegraphs)....316.
52 & 53 Vict. c. 43 (Tonnage)....154, 157.
54 & 55 Vict. c. 31 (Mail Ships)....210.
57 & 58 Vict. c. 60, ss. 77—91....154.
s. 220....280.
s. 418....316, 319.
s. 419....39 *seq.*, 56, 280, 316, 373, 441, 458.
s. 421....55.
s. 422....56.
s. 424....319.
s. 469....281.
s. 503....152.
s. 504....299.
s. 572....246.
s. 578....246.
s. 599....246.
s. 603....215.
s. 604....256.
s. 605....245.
s. 607....280.
s. 633....216.
s. 688....201.
60 & 61 Vict. c. 21 (Mersey Channels Act, 1897)....55.
60 & 61 Vict. c. 61....256.
61 & 62 Vict. c. 14....153, 159.
63 & 64 Vict. c. 32....90, 153.
6 Edw. VII. c. 48, ss. 54, 55....154.
s. 68....153.
s. 71....157.
Local Navigation Acts, 519 *seq.*
Local Pilotage Acts, 247 *seq.*

STAY OF PROCEEDINGS,
cross actions, one ship only under arrest, 294.
successive actions, cargo owner and ship owner, 301.

STAYS, IN. See *Going about.*
duty to keep clear of ship, 30, 486.
whether ship must hold herself in stays, 489.
missing, 487.

Steam Vessel,
meaning of the term in the regulations, 333.
tug is, 334.
ship propelled by machinery, 333.
meeting end on, Art. 18..395. See *Meeting Steamships.*
to keep out of the way of sailing ship, Art. 20..404.
in narrow channel, starboard side, Art. 25..440.
to slacken or stop, if necessary, Art. 23..418.
lights of. See *Lights, Ships'.*
tug is, and must keep out of the way, 167, 405.
fog signals for, Art. 15..366.
speed in fog, Art. 16..372.
lying dead in the water, duty of, 333, 340, 404.

Steering and Sailing Rules, Arts. 17—26..385 *seq.*
whether Art. 27 applies only to, 451, 467.

Steering Gear, failing to act, 9, 162.

Stern Light,
Article 10..358.
to be shown, though no risk, 359.
when to be shown, and how long, 359.
whether pilot boat may exhibit, 361.

Stopping and Reversing,
rule as to, Art. 23..418.
"if necessary," meaning of, 419.
in what waters it applies, 421.
nor infringed until opportunity of obeying it, 430.
analogous rule for sailing ships, 381, 431.
effect of, on ship's head, 433, 434.
not always prudent course, 432.
in order to hear more clearly, 378.
application of Art. 23 in fog, 419.
object of rule is to minimise effect of, as well as to prevent collision, 318, 430.
burden of proof, upon steamship failing to, 431.
when other ship's course cannot be made out, 419, 430.
rule applied to tug, 167.
overtaken ship not bound to, 431.
the case of *The Khedive*, 46, 424.

Stowing Anchors and Spars, 496.

Suction, effect of, 493.

Suez Canal,
authority of pilot in, 217, 241.
pilotage not compulsory, so as to exempt owners, 218.
local rules of navigation for, 228.

Sufferer by Collision. See *Persons entitled to Recover.*

Sunken Ship,
damage by, 87 *seq.*
damage to, 90.
whether duty to raise, as against wrong-doer, 107.
money paid to wreck raising authority, damages, 108, 163.
wrong-doer not discharged by sinking of his ship, 94.
duty to light and buoy, 82, 88.
cost of raising, 163, 283.
negligence of independent contractor in not lighting, 89.

Surety, recovery by, against part owner, 95.

Swell, sinking and damaging craft by raising, 27, 498.

Tack. See *Port Tack; Starboard Tack; Beating out Tack.*

Tackle, Ground. See *Ground Tackle.*

Tees,
local rules of navigation for, 528.
pilotage in, 261.

Telegraph Cable, damage to, 78, 202.

Telegraph Ships,
lights and signals for, Art. 4..316, 344.
Submarine Telegraph Act, 1885..316.

Thames,
local rules of navigation for, 531.
rules under Watermen's Act, 544.
damage to property of Thames Conservancy by compulsory pilot, 218.
speed in, 539, 542.
waterman, is owner's servant, 219.

Thick Weather. See *Fog.*

Third Party Procedure, 197, 297.

Third Ship,
liability of, for collision between two others, 26.
recovery by, collision caused by fault of two others, 27.
where collision caused by fault of tug or tow. See *Tug and Tow.*

Tide,
customary track in rivers, with reference to, 446, 490.
eddy tide causing collision, 423, 492.
immaterial, as regards speed, where both under way, 375.
speed, through the water or over the ground, 498, 529.
duty for vessel proceeding against tide to ease rounding point, 443, 446.

Tonnage,
meaning of word, 154.
of foreign ships, for estimating liability, 153 *seq.*
of steamships, engine-room not deducted, 152.
crew spaces, when deducted, 152, 156.
navigation spaces, when deducted, 152, 156.
double bottom, 154.
of tug under 15 tons burden, 157.
of foreign ships, how proved, 155.

Tow. See *Tug and Tow.*

Towage Contract. See *Tug and Tow.*
its terms and performance, 187—191.
broken by negligence causing damage to tow, 187.
mutual rights of tug and tow under, 188.
special, 194.

Track of Ships, crossing it, 495.

Transfer of Action, 300.

Transport, damage by, to another of the fleet, 67.

Trawler,
defined, 354.
when "engaged in trawling," 357.
signal by day when trawling, 356.
fog signals, 355.
lights of, Art. 9..354, 357.
with gear fast, signal, 355.
duty of steam trawler to keep out of the way, 407, 409, 463.
is not "proceeding" while hauling trawl, 404.
whether sailing trawler within Art. 17..392, 408.
trawler with trawl down, keep out of the way, 407, 408.

Trent, local rules. See *Humber.*

Trinity House, London, pilotage, 215, 253 *seq.*

Tug and Tow,
tug and tow for some purposes deemed to be one ship, 167.
as regards compliance with the regulations, 167, 405, 406.
sailing ship in fault for not keeping out of the way of, 168.
measure of liability, limitation, 126, 160, 183.
stop and reverse rule, applied to, 167.
"tug is servant of the tow," meaning of the phrase, 170.
danger of double command, 171, 174, 229.
doctrine of common employment as between, 195.
command, where two or more ships in tow, 196.
liability of tow for damage by tug, 170.
where the command is with the tug, 173, 196.
compulsory pilot in charge of tow, 177, 188, 227.
compulsory pilotage no defence where tug deficient, 228.
tug compulsorily employed, 178.

Tug and Tow—*continued.*
whether tug liable for fault of pilot, 172, 177, 192, 227.
responsibility for employment of tug, 180.
duty to employ, when driving, 14, 180, 481.
liability of tow-owners for damage by tow, 174.
liability of tug-owners for damage by tow, 174.
whether tug liable for negligence of tow, and *vice versâ*, 54, 172.
whether crew of tug are tow-owners' agents, 174.
improper number of ships in tow, 195.
collision between two ships in tow, 196.
tug and third ship by fault of tug, 172.
tug and tow, 179, 188.
division of loss, collision between tow and third ship, 179, 185, 192.
all three in fault, 179.
recovery by tow of damages paid to third ship, 192.
damages paid by tow for damage by tug, insurers liable, 170.
recovery by tug against tow, 194.
limitation of liability, 126, 195.
injury to tow by tug, "improper navigation," 161, 195.
joint and several liability of, 179.
American cases as to liability of tug and tow, 180 *seq.*, 189, 196.
tug making fast, without knowledge of tow, 183.
damage by tow getting adrift, 183.
unwieldy tow, 167, 182, 183.
tows sagging to leeward, 183.
tug disobeying pilot of tow, 184.
parting of tow rope, 14, 184, 189.
tug casting off tow line, 185, 189, 193.
damage by tug not anchoring in heavy squall, 184.
heavy ship being moved by tugs, 185, 186.
pilot in charge, 184, 186.
tug controlled by helm of tow, 186.
damage by tow's fender, 186.
tow with sail set, damage by, 186, 189.
steamship in tow putting engines astern, damage by, 186.
damage by tow, after being cast off, 27, 189, 193.
tug towing her ship ashore, 189.
careless towing, 189.
casting off, duty to stand by after, 190.
unseaworthy ship in tow, 190.
negligent collision with tug, breach of towage contract, 283.
damage to third ship by tow line, 191.
lights for steamship towing, Art. 3..343.
sailing ship towing, 344.
tug waiting to assist tow when injured, remuneration, 188.
tug, tow, and third ship, third party procedure, 197.
tow lashed alongside, 174.
liability *in rem*, 170, 179.

Tug and Tow—*continued.*
tug salvor, 184, 188, 195.
two tugs in charge of one tow, 180, 185, 194.
negligent towage, Admiralty jurisdiction, 197.
the towage contract, its terms and performance, 187, 191.
contract may indemnify tug-owner for negligence, 179.
duties of tug, 188.
in crowded waters, 187.
must be sufficient for her work, 188.
sufficiency of tow line, 188.
must keep vigilant look-out, 189, 473, 478.
slip, when necessary, 182, 191.
must warn tow of danger, 188.
if obliged to cast off tow must pick her up again, 189.
must obey orders of tow, 187.
must keep clear of craft without orders from tow, 187.
duties of tow, 190.
must follow in tug's wake, 190.
warn tug of danger, 176, 190.
be ready to cast off when necessary, 190.
have proper lights exhibited, 190.
give order to slip when necessary, 190.
special towage contract, 194.
as to putting tow line on board tug, 191.
tugs racing for a job, 23.
tug working at ship ashore, duty to keep out of the way, 492.
rules as to towage in the Tyne, 545.
Tees, 528.
Thames, 537.

Turkey, ships of, do not use bell, 367.

Tyne,
special rules of navigation for, 545.
pilotage in, 258.
collision in, 489, 501.

Uncertainty, as to the other ship's course, 327, 389, 430.

Under Steam, meaning, 333.

Under Way,
meaning of the term, 334, 340, 348, 362, 368.
in improper weather, 562. And see *Fog.*
whether fault of master or pilot to be so under way, 229, 231, 236.
getting under way, precautions before, 485.
steamship lying dead, 333, 340, 404.

Underwriters. See *Insurance.*

WARPING, special precautions required whilst, 191.

WARSHIPS, crossing a fleet of, 458 *seq.*

WATERMAN,
owner liable for negligence of Thames licensed, 219.
negligence of watermen engaged by pilot, 226.
rules as to Thames, 544.

WEARING,
instead of tacking, 487.
ship ahead when wearing is not being overtaken, 439.

WHARF,
collision with ship at, 33.
collision with, 77, n.

WHARFINGER,
liability of, for damage to ship grounding, 91.
duty to keep berth in proper condition, 90.

WHISTLE,
steamship to sound, in thick weather, Art. 15..366.
signals by, indicating alteration of course, Art. 28..467.
departure from regulations dictated by, 467.
whether duty to sound can be excused under Art. 27..466.

WILFUL DAMAGE, by master, owner not liable for, 15, 28, 65, 84.

WINDING RIVER, navigation of. See *Narrow Channel; Rivers.*

WRECK,
damage by sunken, 87 *seq.*, 273.
duty of harbour authority to remove, 90.
duty to light and buoy, 82, 88.
abandonment of, 82, 88.
cost of raising, insurance, 273.

WRIT. See *Practice.*

WRONG-DOER,
actual wrong-doer primarily liable, 62.
no limitation of his liability, 63, 157.
shipowner's remedy over against, 67.
shipowner *primâ facie* employer of, 64.
liability of joint wrong-doers, 95.
contribution between co-owners, 95, 132.
liability in case of damage by King's ship, 62, 63, 94.
not purged by payment of statutory liability, 163.
liable notwithstanding insurance, 115.

WRONG-DOING SHIP,
personification of ship, 2, 70 *seq.* See *Ship; Liability.*
identification of, 298, 306.

LONDON:
PRINTED BY C. F. ROWORTH, 88, FETTER LANE, E.C.

THE

MARITIME CONVENTIONS ACT, 1911

[1 & 2 Geo. 5, c. 57].

BY

E. S. ROSCOE,

BARRISTER-AT-LAW,

ADMIRALTY REGISTRAR OF THE HIGH COURT,

AND

HELENUS M. ROBERTSON,

OF THE NORTHERN CIRCUIT, BARRISTER-AT-LAW,

EDITORS OF "MARSDEN'S COLLISIONS AT SEA" (6th Edit.).

LONDON:

STEVENS AND SONS, LIMITED,

119 & 120, CHANCERY LANE,

Law Publishers.

1912.

NOTE.

All references to MARSDEN *in this work are to "Marsden's Collisions at Sea" (6th Edit.).*

CONTENTS.

INTRODUCTORY NOTE.

ARRANGEMENT OF SECTIONS.

Provisions as to Collisions, &c.

SECTION PAGE

1. Rule as to division of loss 6, 12
2. Damages for personal injuries 10, 15
3. Right of contribution 9, 16
4. Abolition of statutory presumptions of fault 10, 17
5. Jurisdiction in cases of loss of life or personal injury .. 18

Provisions as to Salvage.

6. General duty to render assistance to persons in danger at sea 19
7. Apportionment of salvage amongst owners, &c. of foreign ship 20

General Provisions.

8. Limitation of actions 10, 20
9. Application of Act 22
10. Short title and construction 23

INTRODUCTORY NOTE.

Origin of Conventions.

The Maritime Conventions Act, 1911, is designed (*a*) to give effect to two Conventions approved and signed at Brussels on September 23rd, 1910, by the representatives of the principal maritime nations of the world. The Conventions are themselves the outcome of a desire, repeatedly expressed at successive conferences of the International Maritime Committee, that questions arising in connection with salvage and collisions at sea (*b*) should be decided in accordance with the provisions of one universal and international code of law.

Contracting States.

The contracting States (*c*) were Germany, Argentine Republic, Austria-Hungary, Belgium, Brazil, Chile, Cuba, Denmark, Spain, United States of America, France, Great Britain (*d*), Greece, Italy, Japan, Mexico, Nicaragua, Norway, Holland, Portugal, Roumania, Russia, Sweden, and Uruguay. Provisions are contained in the Conventions with regard to the relationship of contracting and non-contracting States, to the powers of contracting States to summon a fresh conference, to the conditions under which non-contracting States may contract in the future, and to the ratification and denunciation of the Conventions by the contracting States. The principal matters dealt with and changes made in the existing law may be briefly summarised as follows, subsidiary points being dealt with in notes attached to the various sections of the Act.

(*a*) See preamble, *post*, p. 12.

(*b*) The Conventions in fact deal with damage arising otherwise than by collision. See observations *post*, at p. 11.

(*c*) The texts of the Conventions were published in a Parliamentary Paper (Miscellaneous, No. 5 (1911), Cd. 5558), which contains, in addition to the original texts, which were signed in the French language only, English translations thereof and a report in French presented to the Diplomatic Conference, 1910. The countries are enumerated in the alphabetical order which they occupy in the French language.

(*d*) The application of the Act to the colonies is dealt with under sect. 9. See *post*, p. 22.

Rule of Division of Loss.

Proportional division of loss.

The most important change made by the Act is the substitution for the English rule of equal division of loss in cases where two ships are found in fault (*e*), of a rule which has been in force in various European countries (*f*), whereby the loss is apportioned in accordance with the degree of fault attributed to each vessel by the Court. This change is effected by the provisions of sect. 1 of the Act, and by the repeal of sub-sect. 9 of sect. 25 of the Judicature Act, 1873, upon which the English rule has since the date of that Act rested.

Whether the change brought about in this respect by the Act will be as great in substance as it is in form, is open to doubt. In the first place, the Act itself provides (sect. 1 (1) (a)) that, "if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally" (*g*). In the second place, the attitude of distinguished lawyers, in the illuminating debate upon the subject in the House of Lords (*h*), throws some light upon what is likely to be the attitude of English Courts in dealing with the provisions of the Act. In view of the observations (*i*) made on that occasion, it seems probable that English Courts will, where two ships have been found in fault, usually divide the damages equally. In following this course they would apparently be following the practice of Courts in the countries where the new rule is already in operation (*k*).

House of Lords debate.

(*e*) For a statement and history of the English rule, see Marsden's Collisions at Sea, 6th ed. p. 117 *seq.*

(*f*) The countries in which this rule has prevailed are Belgium, France, Greece, Portugal, Germany, the Scandinavian States and Roumania. See speech of Lord Gorell in the House of Lords debate, Hansard's House of Lords Debates, vol. 10, col. 20.

(*g*) See *post*, p. 13.

(*h*) The debate took place on the 31st October, 1911, and is reported in Hansard, Vol. 10, House of Lords Debates, cols. 16 to 38.

(*i*) Lord Gorell spoke in opposition to the proposed change. Lord Loreburn, L. C., said: "My consolation is this. I believe that in accordance with the power reserved in this Bill, in nine cases out of ten, perhaps in nineteen cases out of twenty, the old rule will be observed and the loss divided, on the ground that the judge will say he really cannot be sure which of the two is the more to blame." See also observations by Lord Halsbury.

(*k*) It was stated by Lord Gorell in the debate in the House of Lords (see col. 21) that a note had been cir-

Cargo-owners.

By sect. 1 of the Act the innocent owner of cargo and of other property laden on board one of two delinquent vessels is only entitled to recover such an amount of his loss as is proportionate to the degree of fault which attaches to the vessel on which his goods were laden. In this respect the Act in limiting the right of the cargo-owner to recover full damages is in accordance with the rule of English law, first clearly laid down by Dr. Lushington in a now famous case (*l*), and recently affirmed in the House of Lords (*m*). But the new rule goes further, and in theory identifies the innocent cargo-owner with the shipowner, whose servants have been negligent, and in this respect is contrary to judicial opinion (*n*). It is open to doubt whether it is equitably, even in theory, an advance on the old rule.

Scope of New Rule.

Innocent third parties.

While the Act would appear clearly to lay down the rights and liabilities existing between the owners of two delinquent ships and their cargoes laden therein, it does not seem perfectly clear whether by the terms of the Act the innocent owner of a third ship, or cargo therein, or of property on land, damaged by the joint negligence of the two first-mentioned ships, has or has not lost his rights of recovery in full (*o*) from the owners of either delinquent vessel. Taking the words of the Act, the rule laid down in sect. 1 only applies, "Where, by the fault of two or more vessels, damage is caused to one or more of *those* vessels . . . ." If these words be interpreted strictly it would seem that the rule would not be applicable in the case of damage sustained by innocent third parties, and that these persons have left to them all the remedies which they have hitherto enjoyed.

culated on the Continent to the effect that in countries where the proportional rule is in force the loss has been apportioned equally in ninety per cent. of the cases of "both to blame." See further as to the working of this rule in these countries, The Law Quarterly Review, vol. xii. p. 269.

(*l*) *The Milan* (1861), Lush. 388.

(*m*) *The Drumlanrig*, [1911] A. C. 16.

(*n*) *The Milan*, *supra*.

(*o*) See Marsden, p. 132; *The Frankland*, [1901] P. 161; *The Seacome*, Ship. Gaz Dec. 13th, 1911; *The Devonshire*, *ibid.*

Looking at the question from a somewhat broader point of view, there would seem to be no doubt that it was the intention of the contracting States, as manifested in Art. 4 of the Collision Convention, that innocent third parties should only recover from each delinquent party in proportion to the degree of fault attaching to the latter (*p*).

Meaning of damage or loss.

It would seem that the personification of the vessels in sect. 1, a popular and quite inaccurate form of phraseology, may lead to confusion in determining what is "damage or loss" within the meaning of the section. Taken alone the words "damage or loss . . . . to one or more of those vessels, to their cargoes or freight, or to any property on board" seem to refer to the actual damage or loss caused to the objects named as distinguished from the owners of those objects. That, however, consequential damages, at least of some kinds, are included in the scope of the section is made clear by the extended meaning given to the expression "damage or loss" by sect. 1, sub-sect. (2). By that sub-section "references to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages." But even with these extensions it may be doubted if the section, construed literally, covers every kind of loss or damage hitherto recoverable in damage actions, *e.g.*, damages for loss of the use of a ship (*q*), or loss of bounties in the case of a foreign ship. Possibly, by a benevolent construction, such losses might be held to be covered by the words "loss . . . . to one or more of those vessels" or "freight." This was probably the intention of those who passed the Act, though the Convention is itself obscure as to the damages, with which it professes to deal (*r*). A still greater difficulty is apparent in the case of such a head of damages as was discussed in the case of the *Mediana* (*s*). Thus, where a public non-

(*p*) According to the English translation of this article, "even to third parties a vessel is not liable for more than such proportion of such damages." The preamble (see *infra*, p. 12) states that the object of the Act is to give effect to the Conventions, and it might therefore be that the Court would, in case of doubt, pay regard to the texts of the Conventions.

(*q*) See Roscoe on Damages in Collision Actions, pp. 73, 74.

(*r*) Art. 4 of the Collision Convention refers to "damages caused either to the vessels or their cargoes, or to the effects or other property of the crews, passengers, or other persons on board . . ."

(*s*) [1900] A. C. 113. See also

trading authority has kept a stand-by ship, and this is used in place of one damaged by collision, such authority has obtained as damages a sum to represent the use of the substituted ship. It may be that in order to bring this head of damages within sect. 1 of the Act, it will be necessary to interpret "damage or loss . . . . to one or more of those vessels" as meaning "damage or loss . . . . to the *owners* of one or more of those vessels." This interpretation would probably solve all the difficulties referred to above.

Contribution.

Contribution in respect of all damage within the Act.

A right of demanding contribution appears to exist under the Act in respect of all damage coming within the terms of the Act. Thus presumably one of two delinquent shipowners will be able in the future, as in the past, to recover from the other the balance, if any, due to him after taking into account all items on each side, regard being had to the proportion of fault attributable to either ship.

Damage not within Act

What will be the position of damage (*t*) not within the Act is not clear. On the one hand, in so far as any right of demanding contribution hitherto recognised has not been abolished by the express terms of the Act, such right might be deemed to continue to exist. On the other hand, such right might be considered to have been removed by the Act on the principle of *inclusio unius exclusio alterius*. Probably the former view would succeed.

Life and injury claims.

The right given in respect of loss of life and personal injury claims is probably, so far as the first-mentioned claims are concerned, new (*u*). It may be observed that special rights are given by sect. 3 (2) of the Act for those seeking contribution in respect of these claims (*x*).

The Greta Holme, [1897] A. C. 596; *The Marpessa*, [1907] A. C. 241; *The Astrakhan*, [1910] P. 172; Marsden, pp. 111, 112; Roscoe on Damages in Collision Actions, pp. 84—87.

(*t*) As possibly in the case of claims by innocent third parties, see *ante*, p. 7. It may be, however, that payments to innocent third parties by one of two delinquent shipowners might be regarded as "expenses . . . recoverable at law by way of damages" under subsect. (2) of sect. 1, and therefore within the Act.

(*u*) See *The Bernina* (1888), 13 App. Cas. 1; *The Vera Cruz* (1884), 10 App. Cas. 59; *The Circe*, [1906] P. 1.

(*x*) See *post*, p. 16.

Loss of Life and Personal Injuries.

Loss of life.

Claimants under Lord Campbell's Act (*y*) would appear to enjoy an improved position under the Act, as for the first time they are given a general power of enforcing their claims *in rem* (*z*). It would seem, further, that the limit of time within which an action must be brought has been extended from one year under Lord Campbell's Act to two years or more (*a*).

Personal injuries.

On the other hand, claimants in respect of personal injury would appear, in having their period of limitation reduced to two or more years (*b*). to be in a worse position than formerly.

Statutory Presumption of Fault.

The Act repeals the law, hitherto in force, that a ship in the navigation of which one of the Collision Regulations has been infringed, shall be deemed to be in fault for a collision, "unless it is shown to the satisfaction of the Court that the circumstances of the case made departure from the regulation necessary" (*c*). The effect of the removal of this provision will be that a ship will only be held to be in fault for a breach of the Collision Regulations if, in the opinion of the Court, such breach *did in fact* contribute to the collision, even although the circumstances did not make departure from the regulation in question necessary. It follows that any inquiry as to whether a breach of a regulation *might possibly* have contributed to a collision will be henceforth irrelevant (*d*), and the law will now be unquestionably clearer.

(*y*) 9 & 10 Vict. c. 93. See sect. 5, *post*, p. 18.

(*z*) *The Vera Cruz* (1884), 10 App. Cas. 59. By the Shipowners' Negligence Remedies Act, 1905 (5 Edw. 7, c. 10), loss of life and personal injury claimants were given a right to get a ship arrested where the accident had been caused by the ship, or had been sustained on, in, or about the ship, in consequence of the negligence of the owners or their servant, or of the defective equipment of the ship, provided the accident happened in a port or harbour of the United Kingdom.

(*a*) See *post*, p. 20.

(*b*) *Ibid.*

(*c*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 419 (4). See Marsden, p. 39.

(*d*) See Marsden, p. 42.

Compulsory Pilotage.

By Art. 5 of the Collision Convention, the defence of compulsory pilotage was abolished. An article was, however, added before the Convention was signed, to the effect that it should not be obligatory to give effect to Art. 5 until the contracting States had arrived at an agreement on the subject of the limitation of liability of shipowners. The defence accordingly remains good under the Act. It seems probable, however, that the defence will be abolished by legislation at an early date. A provision to this effect was contained in sect. 44 of the Pilotage Bill, which was introduced into Parliament in the session of 1911, but the Bill was not proceeded with.

Salvage.

The Salvage Convention is so far in accord with previously existing English law that it has only been found necessary to insert two sections (*e*) in the Act dealing with this subject. The contents of these are commented upon in the notes attached to the sections (*f*).

Scope of Conventions.

Damage without collision.

It may be observed that the Conventions (*g*) do in fact deal with subjects other than collisions between vessels and salvage. The expression "collision" is only employed in the preamble of the Act and in the references to the Merchant Shipping Act, 1894, contained in sect. 4 (*h*), and it would seem clear that cases where damage has arisen otherwise than by actual contact, are within the terms of the Act. The Collision Convention by its terms (*i*) extends to making good damage caused "either by the execution or non-execution of a manœuvre, or by the non-observance of the regulations, even if no collision had actually taken place."

(*e*) Sects. 6, 7.
(*f*) *Post*, pp. 12–23.
(*g*) See Preliminary Note, *ante*, p. 5.
(*h*) See *post*, p. 17.
(*i*) Art. 13.

An Act to amend the Law relating to Merchant Shipping with a view to enabling certain Conventions to be carried into effect. [16th December, 1911.]

WHEREAS at the Conference held at Brussels in the year nineteen hundred and ten two conventions, dealing respectively with collisions between vessels and with salvage, were signed on behalf of His Majesty, and it is desirable that such amendments should be made in the law relating to merchant shipping as will enable effect to be given to the conventions:

Be it therefore enacted, &c.

King's ships.

It may be noted that the amendments to the existing law are stated to be "in the law relating to merchant shipping." It would appear, therefore, that this Act does not apply to His Majesty's ships. This is borne out by the fact that, by sect. 10 of the Act (*k*), "This Act . . . shall be construed as one with the Merchant Shipping Acts, 1894 to 1907." Sect. 741 of the Act of 1894 provides that that Act shall not apply to His Majesty's ships, except where specially provided (*l*).

Provisions as to Collisions, &c.

Rule as to division of loss.

1.—(1) Where, by the fault of two or more vessels, damage or loss is caused to one or more of those vessels, to their cargoes or freight, or to any property on board, the liability to make good

(*k*) See *post*, p. 23.
(*l*) As to possible result of this, see note to sect. 1, *post*, p. 14.

the damage or loss shall be in proportion to the degree in which each vessel was in fault:

Provided that—

(a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and

(b) nothing in this section shall operate so as to render any vessel liable for any loss or damage to which her fault has not contributed; and

(c) nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

(2) For the purposes of this Act, the expression "freight" includes passage money and hire, and references to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

Act applies to all waters and all vessels.

The Act applies to all waters, and its application is not confined, as is that of the Collision Regulations, to waters navigable by sea-going vessels (*m*). Similarly, the Act applies to all vessels. A vessel is defined by sect. 742 of the Merchant Shipping Act, 1894 (with which this Act is to be construed as one (*n*)), as including "any ship or boat,

(*m*) Marsden, pp. 316, 333.

(*n*) See sect. 10, *post*, p. 23.

or any other description of vessel used in navigation" (*o*). It would seem, therefore, that, for the provisions of the Act to apply, both vessels at fault must be within this definition (*p*).

Fault.

The Act contains no definition of fault, but it would seem that this term would, having regard to the general intention of the Act, only refer to some negligent act in the navigation or management of the vessels (*q*). Contact between the vessels at fault would seem unnecessary (*r*).

King's ships.

Probably the provisions of this section would be treated by the Court as part of the *lex fori*, so that, although the Act does not apply to His Majesty's ships (*s*), and although subsect. (9) of sect. 25 of the Judicature Act, which applied to all cases of collision between ships, is repealed, the rule of division of loss established by this section would be applied in the case of a collision between a warship and a merchantman.

Workmen's compensation claims.

It may be doubted whether claims made under the Workmen's Compensation Act, 1906 (*t*), are within the terms of this section. Although "an expense recoverable at law by way of damages," so far as the claim of an innocent shipowner, who has been forced to pay compensation, against a delinquent shipowner is concerned (*u*), a payment under this Act is not recovered as "damages" but as "compensation." It may also be doubted whether, inasmuch as compensation under the Workmen's Compensation Act is recoverable, irrespective of fault on the part of the employer, the payment of such compensation could be brought within the words contained in sub-sect. (2) of this section, "damage or loss caused by the fault of a vessel."

Compulsory pilotage.

As the defence of compulsory pilotage is not abolished, presumably a successful defence on this ground by one of two vessels, both of which are at fault, would result, if the previously existing practice be followed, in the vessel under pilotage getting only such proportion of her damages as the degree of fault in the other vessel renders her owners liable

(*o*) As to effect of this on County Court jurisdiction, see *post*, under sect. 5, at p. 18.

(*p*) For case of a vessel held not to be used in navigation, see *The Mayor of Southport* v. *Morris*, [1893] 1 Q. B. 359.

(*q*) See introductory note, *ante*, p. 11.

(*r*) *Ibid.*

(*s*) See note to Preamble, *ante*, p. 12.

(*t*) 6 Edw. 7, c. 58.

(*u*) *The Annie*, [1909] P. 176.

to pay, while the vessel not under pilotage would recover nothing (*x*).

It would seem probable that some modification may have to be made in the practice hitherto followed, whereby the owners of each of two ships at fault are required by the Court to bear their own costs (*y*). If a vessel is, for instance, entitled to the larger proportion of damages, the costs of the action should logically be recovered in the same ratio. Costs.

2. Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several: Damages for personal injuries.

Provided that nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

This section seems to affirm the previously existing law, at least so far as relates to claims by or in respect of passengers or members of the crew, other than those by whose personal default the collision was in part caused (*z*). What effect the section would have in the case of a claim being made against the owners of the other ship by, or in respect of, a pilot or member of the crew, by whose negligence the collision was in part caused, does not seem clear. It would seem, however, that the second paragraph of the section has preserved to the persons sued the right to set up the defence of contributory negligence in such a case.

(*x*) Marsden, p. 222. (*y*) Marsden, p. 305.
(*z*) Marsden, p. 132.

"Owners." The expression "owners," which is used in this section for the first time, is defined in sect. 9 (4) of the Act (*a*).

Right of contribution.

3.—(1) Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and any other vessel or vessels, and a proportion of the damages is recovered against the owners of one of the vessels which exceeds the proportion in which she was in fault, they may recover by way of contribution the amount of the excess from the owners of the other vessel or vessels to the extent to which those vessels were respectively in fault:

Provided that no amount shall be so recovered which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2) In addition to any other remedy provided by law, the persons entitled to any such contribution as aforesaid shall, for the purpose of recovering the same, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

Right of contribution. The right of contribution in respect of loss of life claims is probably new. See *ante*, p. 9.

Meaning of proviso. The proviso contained in the second paragraph of subsect. (1) appears to contemplate such a case as that of a seaman recovering against the owners of the ship on which he is not serving. In this case those owners would not be able to recover a contribution from the owners of the other vessel if the latter, had the seaman proceeded against them

(*a*) See *post*, p. 22.

in the first instance, would have had a good defence on the ground of common employment (*b*).

Third party procedure.

It would seem that the wording of the section would permit a party entitled to contribution from another party to bring in such other party as a third party under R. S. C. Ord. XVI. rr. 48—65 (*c*).

Workmen's compensation.

The same difficulties seem to stand in the way of including workmen's compensation claims under this section as in the case of sect. 1 (*d*).

Abolition of statutory presumptions of fault. 57 & 58 Vict. c. 60.

4.—(1) Subsection (4) of section four hundred and nineteen of the Merchant Shipping Act, 1894 (which provides that a ship shall be deemed in fault in a case of collision where any of the collision regulations have been infringed by that ship), is hereby repealed.

(2) The failure of the master or person in charge of a vessel to comply with the provisions of section four hundred and twenty-two of the Merchant Shipping Act, 1894 (which imposes a duty upon masters and persons in charge of vessels after a collision to stand by and assist the other vessel), shall not raise any presumption of law that the collision was caused by his wrongful act, neglect, or default, and accordingly subsection (2) of that section shall be repealed.

As to the effect of the repeal of sect. 419, sub-sect. (4), of the Merchant Shipping Act, 1894, see *ante*, p. 10. The contents of neither of the sections in the Merchant Shipping Act, 1894, referred to are quite accurately set out in this section.

(*b*) Marsden, p. 99.

(*c*) It was contemplated in debate in the House of Lords that third party procedure would be applicable in such a case. See House of Lords Debates, vol. 10, col. 33.

(*d*) See *ante*, p. 14.

Duty to stand by remains.

It may be observed that all that is repealed of sect. 422 is sub-sect. (2), and that consequently the duties of rendering assistance, standing by, and giving names still remain, although no presumption of fault arises in consequence of a breach of such duties.

Jurisdiction in cases of loss of life or personal injury.

5. Any enactment which confers on any Court Admiralty jurisdiction in respect of damage shall have effect as though references to such damage included references to damages for loss of life or personal injury, and accordingly proceedings in respect of such damages may be brought in rem or in personam.

New right *in rem*.

This section is one of considerable importance, as by it claimants under Lord Campbell's Act for the first time become entitled to enforce their claims *in rem* (*e*). This right, by sect. 3, sub-sect. (2), also extends to shipowners seeking contributions in respect of such claims.

County Courts.

Although the wording of this section is not very apt for the purpose, inasmuch as County Courts only possess a limited Admiralty jurisdiction (*f*) in regard to damage, it is probably intended to include County Courts within the scope of its provisions. If this be so, then the question arises whether the claimant under Lord Campbell's Act will be able to bring his action *in rem* in the County Court in circumstances in which a claimant in respect of damage to ship or cargo could not. Thus it has been held that a County Court has no Admiralty jurisdiction in regard to damage claims in the case of a collision in the body of a county between two dumb barges, on the ground that neither of these vessels were ships (*g*). The provisions of this Act, however, apply not only to "ships," but to vessels (*h*), and it might be argued that a right *in rem* had been given to claimants under Lord Campbell's Act by this section, even

(*e*) *The Vera Cruz* (1884), 10 App. Cas. 59, is therefore no longer law.

(*f*) See the County Courts Admiralty Jurisdiction Acts, 1868, 1869 (31 & 32 Vict. c. 71, and 32 & 33 Vict. c. 51), and Williams & Bruce's Admiralty Practice, 3rd ed., pp. 240—248.

(*g*) *Everard* v. *Kendall* (1870), L. R. 5 C. P. 428.

(*h*) See *ante*, p. 13.

where such claimant had sustained his injury as a result of a collision between two dumb barges or otherwise in circumstances in which the County Court has not, so far as damage is concerned, Admiralty jurisdiction. It may, however, be suggested that the contrary view is the more likely to prevail, as from the reference to "damage" in the section it would appear that the Legislature only intends to give jurisdiction *in rem* in respect of life claims in circumstances in which the County Court already has jurisdiction in respect of damage.

Provisions as to Salvage.

General duty to render assistance to persons in danger at sea.

6.—(1) The master or person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, her crew and passengers (if any), render assistance to every person, even if such person be a subject of a foreign State at war with His Majesty, who is found at sea in danger of being lost, and, if he fails to do so, he shall be guilty of a misdemeanour.

(2) Compliance by the master or person in charge of a vessel with the provisions of this section shall not affect his right or the right of any other person to salvage.

The provisions of this section are quite new. The necessity to render assistance only arises in the case of a "person" in danger, and not of a vessel or her cargo, and only where such person "is found at sea in danger of being lost." Presumably, the danger must be imminent.

Position of master.

The position of the master of a ship who finds himself so placed as to be able to perform life-salvage is now, in certain circumstances, somewhat peculiar. If he does render services, he may be entitled to a statutory reward by sect. 544 (3) of the Merchant Shipping Act, 1894, and, if he does not, he may be liable to punishment under this section.

Salvage of an enemy.

As the Act does not refer to His Majesty's ships (*i*), the penalty attaching to failure to render assistance could not be exacted from the commander of one of His Majesty's ships.

Misdemeanour.

By the Merchant Shipping Act, 1894, s. 680 (1), a misdemeanour under that Act is punishable by a fine or imprisonment for not exceeding two years, with or without hard labour, or, if the offence is prosecuted summarily, by a fine not exceeding £100, or imprisonment not exceeding six months, with or without hard labour.

Apportionment of salvage amongst owners, &c. of foreign ship.

7. Where any dispute arises as to the apportionment of any amount of salvage among the owners, master, pilot, crew, and other persons in the service of any foreign vessel, the amount shall be apportioned by the Court or person making the apportionment in accordance with the law of the country to which the vessel belongs.

This may prove a somewhat inconvenient enactment, as it would seem to necessitate, in any case where the section applies, proof by evidence of the "law of the country to which the vessel belongs" (*k*). It may be that the wide discretion hitherto enjoyed by the Court in the matter of apportionment (*l*) will, where the section applies, be curtailed, as the Court must apparently apportion in accordance with a law which may give it no discretion at all.

General Provisions.

Limitation of actions.

8. No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damages for loss of life or personal injuries suffered

(*i*) See note to preamble, *ante*, p. 12.

(*k*) See Taylor on Evidence, 10th edit., pars. 1423—1425.

(*l*) See Kennedy on Civil Salvage, 2nd edit. p. 169.

by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered, and an action shall not be maintainable under this Act to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within one year from the date of payment:

Provided that any Court having jurisdiction to deal with an action to which this section relates may, in accordance with the Rules of Court, extend any such period, to such extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant vessel within the jurisdiction of the Court, or within the territorial waters of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

New limitations.

This section establishes an entirely new limitation of the actions with which it deals (*m*).

Nature of claims concerned.

Apart from the loss of life and personal injury claims, the claims contemplated by this section are the same as those contemplated by sect. 1 of the Act (*n*). Presumably any claims recoverable at law, which are not covered by the terms

(*m*) For previously existing law as regards damage lien, see Marsden, p. 74.

(*n*) *Ante*, p. 8.

of sects. 1 and 8, would not be barred in accordance with the provisions of this Act (*o*). It will be easy in practice to prevent the period of limitation from running, for it will be competent for a party to take out a writ *in rem*, and hold it in readiness (*p*), whenever the vessel on which it is to be served comes within the jurisdiction.

Application of Act.

9.—(1) This Act shall extend throughout His Majesty's dominions and to any territories under his protection, and to Cyprus:

Provided that it shall not extend to the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland.

(2) This Act shall not apply in any case in which proceedings have been taken before the passing thereof, and all such cases shall be determined as though this Act had not been passed.

(3) The provisions of this Act shall be applied in all cases heard and determined in any Court having jurisdiction to deal with the case and in whatever waters the damage or loss in question was caused or the salvage services in question were rendered, and subsection (9) of section twenty-five of the Supreme Court of Judicature Act, 1873, shall cease to have effect.

36 & 37 Vict. c. 66.

(4) This Act shall apply to any persons other than the owners responsible for the fault of the vessel as though the expression "owners" included such persons, and in any case where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and

(*o*) See *ante*, p. 7.

(*p*) This would be subject to the leave of the Court being obtained under R. S. C. Ord. VIII. r. 1, for the renewal of the writ.

management of the vessel, this Act shall be read as though for references to the owners there were substituted references to the charterers or other persons for the time being so responsible.

As no date is given for the coming into operation of the Act, its provisions presumably apply to all proceedings taken after December 16th, 1911, on which day the Act received the Royal Assent. Sub-sect. 2

The Act applies to waters to which the Regulations for Preventing Collisions at Sea do not (*q*). Sub-sect. (3).

This sub-section appears consistent with the principles of English law with regard to liability hitherto recognized (*r*). Sub-sect. (4).

10. This Act may be cited as the Maritime Conventions Act, 1911, and shall be construed as one with the Merchant Shipping Acts, 1894 to 1907. Short title and construction.

(*q*) See Marsden, pp. 316, 333. (*r*) See Marsden, pp. 62 *seq.*

LONDON
PRINTED BY C. F. ROWORTH, 88, FETTER LANE, E.C.

JUNE, 1917.

A

SELECTION

OF

RECENT LAW WORKS

PUBLISHED BY

STEVENS & SONS, LIMITED,

119 & 120, CHANCERY LANE, LONDON, W.C.2.

*** A Discount of **20 per cent.** off all new Books (except where marked *net*) for Cash with Order. (Carriage or Postage extra.)

Complete Catalogue of New and Secondhand Law Works post free.

A B C GUIDE TO THE PRACTICE OF THE SUPREME COURT, 1916. *Net*, 5*s*.

"Of great service to the profession."—*Solicitors' Journal.*

ACCOUNTS.—Hodsoll's Practical Accounts for Executors and Trustees. 1914. *Net*, 10*s*. 6*d*.

"Invaluable to law and accountancy students, solicitors and others."—*Law Times.*

ADVOCACY.—Harris' Hints on Advocacy.—Fourteenth Edition. 1911. 7*s*. 6*d*.

"Deserves to be carefully read by the young barrister whose career is yet before him."—*Law Magazine.*

AGRICULTURAL LAW.—Spencer's Agricultural Holding Acts. Fifth Edition. With Notes. 1911 to 1915. 8*s*.

"A thoroughly practical and useful treatise."—*Saturday Review.*

Spencer's Small Holdings Acts.—With Notes. 1909 to 1910. 7*s*. 6*d*.

ANNUAL COUNTY COURTS PRACTICE, 1917. *Net*, 1*l*. 5*s*.

"It admirably fulfils the essential requisites of a practice book."—*Law Times.*

ANNUAL DIGEST, 1916. 15*s*.

ANNUAL STATUTES, 1916. 15*s*.

BANKING.—**Hart's Law of Banking.**—Third Edition. 1914. **1*l.* 12*s.***

"The best all-round work on banking law which is in existence."—*Financial News.*

BANKRUPTCY.—**Aggs' Handbook on Bankruptcy.** 1915. ***Net*, 4*s.***

Lawrance's Deeds of Arrangement, with **Precedents.** Eighth Edition. By SYDNEY E. WILLIAMS. **1914.** **7*s.* 6*d.***

"Concise, practical, and reliable."—*Law Times.*

Williams' Law and Practice in Bankruptcy.—Eleventh Edition. By E. W. HANSELL and M. E. HANSELL. 1915. **1*l.* 10*s.***

"The leading text-book on bankruptcy."—*Law Journal.*

CARRIERS.—**Disney's Law of Carriage by Railway.**—Fourth Edition. 1915. **7*s.* 6*d.***

"Can be cordially recommended to the lawyer."—*Law Times.*

CHANCERY.—**Daniell's Chancery Practice.**—Eighth Edition. By SYDNEY E. WILLIAMS and F. GUTHRIE-SMITH. 2 vols. 1914. **5*l.* 5*s.***

Daniell's Chancery Forms and Precedents.—Sixth Edition. By R. WHITE, F. E. W. NICHOLS and H. G. GARRETT. 1914. **2*l.* 10*s.***

"The two volumes on Practice and the one volume of Forms constitute together a most valuable work on the practice of the Chancery Division."—*Law Quarterly Review.*

COMPANY LAW.—**Palmer's Company Law.** A Practical Handbook for Lawyers and Business Men. Tenth Edition. By ALFRED F. TOPHAM. 1916. **15*s.***

"Palmer's 'Company Law' is one of the most useful and convenient text-books on the practitioner's bookshelf."—*Law Times.*

Palmer's Company Precedents.—Eleventh Edition.

Part I. General Forms. 1912. 2*l.*

Part II. Winding-up Forms and Practice. 1912. 1*l.* 14*s.*

Part III. Debentures and Debenture Stock. 1912. 1*l.* 6*s.*

"Palmer's works on Company Law are all beyond criticism."—*Law Magazine.*

COMPANY LAW—*continued.*

Palmer's Private Companies.—Thirtieth Edition. 1917. *Net*, 1*s.*

Palmer's Shareholders', Directors', and Voluntary Liquidators' Legal Companion.—Twenty-ninth Edition. 1915. *Net*, 2*s.* 6*d.*

CONSTITUTIONAL LAW.—**Ridges' Constitutional Law of England.**—Second Edition. 1915. 15*s.*

"It enables the student to obtain a completer view of the whole field than is obtainable from any other book with which we are acquainted."—*Law Notes.*

CONTRACTS.—**Addison's Law of Contracts.**—Eleventh Edition. By W. E. Gordon and J. Ritchie. 1911. 2*l.* 2*s.*

"Among all the works on Contracts, there is none more useful to the practitioner than Addison."—*Law Times.*

Leake's Principles of the Law of Contracts.—Sixth Edition. By A. E. Randall. 1911. 1*l.* 12*s.*

"A full and reliable guide to the principles of the English Law of Contract."—*Law Journal.*

Pollock's Principles of Contract.—Eighth Edition. 1911. 1*l.* 8*s.*

"There is no book on the English Law of Contract which deals so lucidly and yet so comprehensively as this."—*Law Journal.*

CONVEYANCING.—**Prideaux's Forms and Precedents in Conveyancing.**—Twenty-first Edition. By B. L. Cherry and R. Beddington. 2 vols. 1913. 4*l.* 4*s.*

"'Prideaux' is the best work on Conveyancing."—*Law Journal.*

Wolstenholme's Conveyancing and Settled Land Acts.—Tenth Edition. By B. L. Cherry, A. E. Russell and C. V. Rawlence. 1913. 1*l.* 5*s.*

"The work is valuable not only as an accurate statement of the present law, but as the most reliable guide on matters of detail intended to be covered by the new legislation."—*Law Journal.*

COPYHOLD ENFRANCHISEMENT.—**Lloyd's Practice in Enfranchisements under the Copyhold Act, 1894.** 1913. 5*s.*

"The book is well arranged and well written, and the subject is so clearly dealt with as to be easily understood."—*Law Notes.*

CRIMINAL LAW.—**Archbold on Indictments.**—With Forms. By H. D. Roome. 1916. 10*s.* 6*d.*

Russell's Treatise on Crimes and Misdemeanors.—Seventh Edition. By W. F. Craies and L. W. Kershaw. 3 vols. 1909. 4*l.* 10*s.*

*** May be had in 2 vols. bound in buckram, price 4*l.* 14*s.* 6*d.*

"Indispensable in every Court of criminal justice here and in our colonies."—*The Times.*

DEATH DUTIES.—**Webster-Brown's Finance Acts.**—Third Edition. 1915. 12*s.* 6*d.*

"Contains much practical advice which will be of substantial assistance to practitioners."—*The Times.*

DICTIONARY.—**Wharton's Law Lexicon.**—Twelfth Edition. By E. A. Wurtzburg. 1916. 2*l.* 2*s.*

"The most useful of legal works."—*Law Journal.*

The Pocket Law Lexicon.—Fourth Edition. 1905. 6*s.* 6*d.*

"A wonderful little legal Dictionary."—*Law Students' Journal.*

DIGEST.—**Mews' Quinquennial Digest, 1911-1915.** By John Mews. 1916. 2*l.* 10*s.*

DIVORCE.—**Browne and Watts' Law and Practice in Divorce and Matrimonial Causes.**—Eighth Edition. By J. H. Watts. 1913. 1*l.* 8*s.*

"The practitioner's standard work on divorce practice."—*Law Quarterly Review.*

EASEMENTS.—**Goddard's Treatise on the Law of Easements.**—Seventh Edition. 1910. 1*l.* 5*s.*

"Nowhere has the subject been treated so exhaustively."—*Law Times.*

Innes' Digest of the Law of Easements.—Eighth Edition. 1911. 7*s.* 6*d.*

"The student will find in it everything that he wants, while the practitioner will be glad to have so safe and comprehensive a guide."—*Law Journal.*

EQUITY.—**Seton's Forms of Judgments and Orders.** With Practical Notes. Seventh Edition. By A. R. Ingpen, K.C., F. T. Bloxam and H. G. Garrett. 3 vols. 1912. 6*l.*

"A most valuable and indispensable work."—*Law Journal.*

Smith's Practical Exposition of the Principles of Equity.—Fifth Edition. 1914. 21*s.*

"Useful to both practitioner and student alike."—*Law Students' Journal.*

EVIDENCE.—**Holt's Outline of the Rules of Evidence.**—1917. *Net*, 1*s*.

Tregarthen's Law of Hearsay Evidence.—1915. *Net*, 5*s*.

"An elaborate and detailed account of a very imperfectly understood topic."—*Law Quarterly Review.*

EXECUTORS.—**Ingpen's Treatise on the Law relating to Executors and Administrators.**—Second Edition. 1914. *Net*, 1*l*. 5*s*.

"The book may be recommended, with confidence, as accurate, practical, and learned."—*Law Quarterly Review.*

FORMS.—**Bowstead's Collection of Forms and Precedents** other than Conveyancing, Company, Local Government and Practice Forms.—2 vols. 1914. *Net*, 2*l*. 10*s*.

"An indispensable adjunct to every practising lawyer's library."—*Law Journal.*

Chitty's Forms of Civil Proceedings in the King's Bench Division.—Fourteenth Edition. By T. W. Chitty, E. H. Chapman and P. Clark. 1912. 2*l*. 2*s*.

"An indispensable adjunct to every working lawyer's library."—*Law Journal.*

Daniell's Chancery Forms and Precedents.—Sixth Edition. By R. White, F. E. W. Nichols and H. G. Garrett. 1914. 2*l*. 10*s*.

"The standard work on Chancery Procedure."—*Law Quarterly Review.*

HIRE-PURCHASE SYSTEM.—**Russell's Practical Manual of Hire-Trade Law.**—Fifth Edition. 1914. 7*s*. 6*d*.

"The book is full of practical suggestions."—*Solicitors' Journal.*

INSURANCE.—**Arnould on the Law of Marine Insurance and Average.**—Ninth Edition. By E. L. de Hart and R. I. Simey. 2 vols. 1914. 3*l*. 10*s*.

"Arnould's 'Marine Insurance' is recognised throughout the British Empire and the United States as a standard work of almost judicial authority."—*Law Journal.*

Stone's Insurance and Workmen's Compensation Cases.—2 vols. 1914. *Net*, 2*l*. 2*s*.

"A very valuable compendium of the case law of insurance."—*Solicitors' Journal.*

INTERNATIONAL LAW.—**Anthonis' Sanctions of International Law.** 1917. *Net*, 1*s*.

Cheng's Rules of Private International Law Determining Capacity to Contract.—1916. 7*s*. 6*d*.

Wheaton's Elements of International Law.—Fifth English Edition. By Coleman Phillipson, LL.D. With an Introduction by the Right Hon. Sir Frederick Pollock, Bart., D.C.L., LL.D. 1916. 1*l*. 15*s*.

"Wheaton stands too high for criticism."—*Law Times.*

LAND VALUES.—Napier's New Land Taxes and their Practical Application.—Second Edition. 1912. 18*s.*

"Napier's explanatory summary of the new taxation and his notes on the sections are admirable."—*Law Quarterly Review.*

LANDLORD AND TENANT.—Woodfall's Law of Landlord and Tenant.—Nineteenth Edition. By W. Hanbury Aggs. 1912. 1*l.* 18*s.*

"Woodfall is really indispensable to the practising lawyer, of whatever degree he may be."—*Law Journal.*

LAW LIST, 1917. *Net,* 10*s.* 6*d.*

LEADING CASES.—Caporn's Selected Cases on the Law of Contracts.—Second Edition. 1914. 15*s.*

Petrides' Student's Cases, illustrative of all branches of the Law. 1910. 10*s.* 6*d.*

"The cases appear to be well chosen and correctly stated."—*Solicitors' Journal.*

Randall's Selection of Leading Cases in Equity.—1912. 9*s.*

"One of the foremost, if not the best, of Equity case books."—*Law Students' Journal.*

Shirley's Selection of Leading Cases in the Common Law.—Ninth Edition. By R. Watson. 1913. 16*s.*

"The selection is very large, though all are distinctly 'Leading Cases,' and the notes are by no means the least meritorious part of the work."—*Law Journal.*

LEGAL HISTORY.—Deans' Student's Legal History.—Third Edition. 1913. 7*s.* 6*d.*

"There is no better short introduction to the study of the law."—*Law Notes.*

LIBEL AND SLANDER.—Ball's Law of Libel as affecting Newspapers and Journalists.—1912. 6*s.*

"A well-arranged and well-executed work."—*Law Journal.*

Odgers' Digest of the Law of Libel and Slander.—Fifth Edition. 1911. 1*l.* 15*s.*

"Should be found on the shelves of every practitioner."—*Law Students' Journal.*

LUNACY.—Heywood and Massey's Lunacy Practice.—Fourth Edition. 1911. 1*l.* 10*s.*

"A complete treatise on lunacy practice."—*Solicitors' Journal.*

MAGISTRATES' PRACTICE, 1916.—By C. M. Atkinson, Stipendiary Magistrate for Leeds. 20*s.*

MENTAL DEFICIENCY.—Davey's Law relating to the Mentally Defective.—Second Edition. 1914. 10*s.*

"This admirably arranged and handy book."—*Law Journal.*

MORTGAGE.—Coote's Treatise on the Law of Mortgages.—Eighth Edition. By SYDNEY E. WILLIAMS. 2 vols. 1912. 3*l.* 3*s.*

"It is essentially a practitioner's book, and we pronounce it 'one of the best.'"—*Law Notes.*

NATIONAL INSURANCE.—Watts on National Insurance.—1913. 12*s.* 6*d.*

"Mr. Watts has studied this complicated Act with great care, and produced a very elaborate and complete edition."—*Law Magazine.*

NIGERIA.—Titles to Land in Nigeria.—1916. *Net*, 30*s.*

NOTARY.—Brooke on the Office and Practice of a Notary.—Seventh Edition. By J. CRANSTOUN. 1913. 1*l.* 5*s.*

"The book is an eminently practical one, and contains a very complete collection of notarial precedents."—*Law Journal.*

PARTNERSHIP.—Pollock's Digest of the Law of Partnership.—Tenth Edition. 1915. 10*s.*

PLEADING.—Bullen and Leake's Precedents of Pleadings.—Seventh Edition. By W. BLAKE ODGERS, K.C., and WALTER BLAKE ODGERS. 1915. 2*l.* 2*s.*

"The standard work on modern pleading."—*Law Journal.*

Eustace's Practical Hints on Pleading.—1907. 5*s.*

"Especially useful to young solicitors and students of both branches of the legal profession."—*Law Times.*

Odgers' Principles of Pleading and Practice.—Seventh Edition. 1912. 12*s.* 6*d.*

"The safest possible guide in all matters affecting pleading and practice."—*Law Journal.*

POOR LAW SETTLEMENT.—Davey's Poor Law Settlement and Removal.—Second Edition. 1913. 15*s.*

"The law of the subject is most industriously and lucidly set out."—*The Spectator.*

POWERS.—Farwell's Concise Treatise on Powers.—Third Edition. By C. J. W. FARWELL and F. K. ARCHER. 1916. 1*l.* 15*s.*

PRIZE CASES.—Cases Decided in the Prize Court and on Appeal to the Privy Council.

Each Part *Net*, 7*s.* 6*d.*

RATES AND RATING.—Davey's Law of Rating.—1913. 1*l.* 10*s.*

"A complete and exhaustive treatise on the subject, beyond doubt the most comprehensive which has yet appeared."—*Law Journal.*

RECEIVERS AND MANAGERS.—Riviere's Law relating to Receivers and Managers.—1912. 9*s.*

"A reliable guide to an intricate subject, and should be of great service to practitioners."—*Law Journal.*

TORTS.—Addison's Law of Torts.—Eighth Edition. By W. E. GORDON and W. H. GRIFFITH. 1906. 1*l.* 18*s.*

"Essentially the practitioner's text-book."—*Law Journal.*

Pollock's Law of Torts.—Tenth Edition. 1916. 26*s.*

"Concise, logically arranged, and accurate."—*Law Times.*

*** An Analysis of the above for Students.—Second Edition. By J. K. MANNOOCH. 1916. 5*s.*

TRADE UNIONS.—Greenwood's Law relating to Trade Unions.—1911. 10*s.*

"An admirably clear exposition of the law."—*Law Quarterly Review.*

A SUPPLEMENT to above, including the Trade Union Act, 1913. 1913. *Net*, 3*s.* 6*d.*

The two works together, net, 10*s.*

TRUSTS AND TRUSTEES.—Godefroi on the Law of Trusts and Trustees.—Fourth Edition. By SYDNEY E. WILLIAMS. 1915. 1*l.* 10*s.*

"An eminently practical and useful work."—*Law Times.*

WAR.—Chartres' Munitions of War Acts.—An Analysis, with Notes. 1916. *Net*, 5*s.*

Chartres' Judicial Interpretations of the Munitions of War Acts.—1917. *Net*, 4*s.*

Higgins' Defensively Armed Merchant Ships.—1917. *Net*, 1*s.*

Page's War and Alien Enemies.—The Law affecting their Personal and Trading Rights; and herein of Contraband of War and the Capture of Prizes at Sea. Second Edition. 1915. *Net*, 6*s.* 6*d.*

Stringer's Practice of the High Court under the Courts (Emergency Powers) Act, 1914, &c. 1915. *Net*, 3*s.* 6*d.*

WILLS.—Theobald's Concise Treatise on the Law of Wills.—Seventh Edition. 1908. 1*l.* 15*s.*

"Indispensable to the conveyancing practitioner."—*Law Times.*

WORKMEN'S COMPENSATION.—Costs under the Workmen's Compensation Act.—With Precedents. 1915. 5*s.*

Knowles' Law relating to Compensation for Injuries to Workmen.—Third Edition. 1912. 15*s.*

"Its merits entitle it to rank with the best of the treatises on the subject."—*Law Quarterly Review.*

Workmen's Compensation Reports.—A complete Series of Reports of Cases on the subject of Workmen's Compensation. With Annotated Index.

Subscription for 1917, 15*s. net* (*postage* 1*s. extra*).

STEVENS & SONS, Ltd., 119 & 120, Chancery Lane, London.

UC SOUTHERN REGIONAL LIBRARY FACILITY
AA 000 729 736 9